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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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5 HEARING

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9 STATE CAPITOL

10 ROOM 113

11
12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, JUNE 4, 2008

16 1:42 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

MEMBER ABSENT

SENATOR JIM BATTIN, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR BATTIN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

MELLONIE S. YANG, Chief
Professional Fiduciaries Bureau

JACKIE MILLER, Executive Director
Professional Fiduciary Association California

MARY D. NICHOLS, Member
Air Resources Board

SENATOR DARRELL STEINBERG

SILVIA SOLIS, representing Mayor Antonio Villaraigosa
Public Policy Advocates

1 RINA VENTURINI
Calpine Corporation

2 JOHN R. BALMES, M.D., Member
3 Air Resources Board

4 ANN NOTTHOFF
5 National Resources Defense Council

6 BONNIE HOLMES-GEN
7 American Lung Association of California

8 CHARLIE PETERS
Clean Air Performance Professionals

9 TIM CARMICHAEL
10 Coalition for Clean Air

11 BILL MAGAVERN
12 Sierra Club California

13 DAN KALB
Union of Concerned Scientists

14 RACHEL McMAHON
15 Center for Energy Efficiency and Renewable Technologies

16 DAVE MODISETTE, Director
17 California Electric Transportation Coalition

18 JAMES E. ENSTROM, Ph.D.
19 U.C.L.A.

20 JOSEPH K. LYOU, Ph.D., Member
South Coast Air Quality Management District Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have a quorum.

I apologize for being late.

Senator Battin is out of the country, so he won't be with us today. I think Senator Cedillo will be here shortly.

We'll go ahead and begin with Mom.

[Laughter.]

CHAIRMAN PERATA: Ms. Yang, come on up.

As long as I brought it up, why don't you introduce your family?

MS. YANG: Great, thank you. I appreciate it.

I'm joined here today by my husband, Joel. Raise your hand, Joel.

[Laughter.]

MS. YANG: Jacob, my five-year-old son with the green shirt on, and Joshua, my seven-and-a-half-year-old son, and by their friends and several other friends in the audience.

CHAIRMAN PERATA: So, you just went out and kind of did a sweep of the school yards. Good.

[Laughter.]

MS. YANG: They had a nice Capitol tour to begin the day. So, they've had an exciting day.

CHAIRMAN PERATA: You must have some political people in your family that you know how to set this up pretty well.

[Laughter.]

MS. YANG: I had a little help.

1 CHAIRMAN PERATA: Well, it seems like we got it
2 all covered.

3 Why don't you go ahead and introduce yourself.

4 MS. YANG: Great, I appreciate it.

5 My name is Mellonie Yang. I am the Chief of the
6 Professional Fiduciaries Bureau.

7 Thank you very much, Senator Perata and other
8 honorable Rules Committee Members. It's a pleasure to be here
9 today to address you.

10 It has been a very exciting year implementing the
11 Bureau from ground zero. Last year, not only did I give birth
12 to my daughter, who is not here, but I also gave birth to the
13 Bureau.

14 CHAIRMAN PERATA: Where is she?

15 MS. YANG: She's ten months old, and she's
16 unpredictable.

17 CHAIRMAN PERATA: I don't think that would have
18 stopped you.

19 MS. YANG: If my husband were holding her, she'd
20 be crying, and she'd want Mama.

21 CHAIRMAN PERATA: You know what? Then we would
22 speed this up.

23 [Laughter.]

24 CHAIRMAN PERATA: Next time.

25 MS. YANG: Thank you.

26 In fact, the pregnancy and the Bureau were so
27 intertwined that I almost named my daughter Fiduciary.

28 [Laughter.]

1 MS. YANG: I was hired by the Department of
2 Consumer Affairs as a special consultant in March 2007, had my
3 baby August 2007, and would open the Bureau up for business on
4 January 2nd, 2008.

5 I began by forming an informal advisory group of
6 professionals covering all spectrums of the industry, including
7 representatives from the courts, the California State Bar,
8 senior advocates, and private fiduciaries to draft and advise --
9 to advise on draft regulations. Before the end of the year, I
10 passed emergency regulations, the examination was developed, and
11 the application packages were complete.

12 In terms of licensing, we are in full swing
13 processing applications. We are on target to issue our first
14 licenses on July 1st.

15 In addition to licensing, a great deal of my
16 focus has been on outreach and enforcement. I've been doing
17 outreach to potential candidates and consumers since I began,
18 and I'm engaged in educating the public by participating in
19 community events around the state.

20 Professional fiduciaries provide an important
21 service to our communities. Many seniors, children, and
22 mentally ill adults benefit from fiduciary services. Licensing
23 and regulation provides more consumer protection by raising the
24 bar in the profession and providing more tools for courts and
25 consumers to make informed decisions.

26 Enforcement is also one of my top priorities. I
27 have been very fortunate to have had such a great opportunity
28 with the department over the year. In implementing the Bureau,

1 I have been very fortunate to have wonderful staff to assist me.
2 And another bonus is that I've met several great people in the
3 process.

4 I want to thank you for supporting the Bureau,
5 and thank you for having me here today.

6 CHAIRMAN PERATA: So, these professionals were
7 all amateurs before this happened?

8 [Laughter.]

9 CHAIRMAN PERATA: And the test is the going to
10 make them better? That's great. Let me know how that goes.

11 I see that you're trying to do with some of these
12 exactly what my point has been: trying to understand.

13 How would you define for someone who is not a
14 fiduciary what that means? What is a fiduciary?

15 MS. YANG: One of my biggest challenges is to
16 define my program in five minutes or less.

17 A fiduciary under the law is a private
18 conservator, a private guardian, a private trustee, or a private
19 agent under durable power of attorney. And what they do for
20 consumers is, they assist certain vulnerable consumers in
21 managing their health and personal care matters and also their
22 finances.

23 Like, for example, you can have an Alzheimer's
24 patient that isn't cognitively aware of -- aware of a lot, and
25 they need assistance in managing their health care situation, as
26 well as collecting their money and paying their bills. So,
27 professional fiduciaries are able to step in a trustee
28 relationship and assist, and do actually a lot of good for these

1 consumers.

2 CHAIRMAN PERATA: I'm watching your son watch
3 himself breathe.

4 [Laughter.]

5 MS. YANG: It's a very important exercise. We
6 practiced that before coming in.

7 CHAIRMAN PERATA: It's probably one of the more
8 productive uses of this room.

9 [Laughter.]

10 CHAIRMAN PERATA: The yawn I'm used to seeing.

11 [Laughter.]

12 CHAIRMAN PERATA: I've exhausted my understanding
13 of the subject matter.

14 Does anybody else have questions?

15 SENATOR PADILLA: What's your daughter's name?

16 MS. YANG: Lillian Leia, after Princess Leia for
17 the boys, Yang.

18 SENATOR PADILLA: It would have been easier to
19 rename the Bureau.

20 [Laughter.]

21 MS. YANG: Good point, although who knows how to
22 spell fiduciary? It was the first thing I did when started, is
23 took a spelling test.

24 CHAIRMAN PERATA: That's what Liz did when she
25 first had the legislation. She learned how to spell it.

26 Anyone in the audience that's been dying to come
27 up and talk about fiduciaries? Really?

28 MS. MILLER: I'm dying to, Senator.

1 Well, Senator Perata and Members, my name is
2 Jackie Miller. I'm the Executive Director of the Professional
3 Fiduciary Association of California.

4 CHAIRMAN PERATA: We all ready have a trade
5 association.

6 [Laughter.]

7 MS. MILLER: Yes, there was a trade association
8 prior to.

9 CHAIRMAN PERATA: But you were amateurs. You
10 weren't professionals.

11 [Laughter.]

12 MS. MILLER: Well, we like to think of ourselves
13 as professional fiduciaries. And we were an association for ten
14 years prior.

15 We are here in support of Ms. Yang's confirmation
16 as Bureau Chief. We believe that her experience fits well with
17 her new position. We've worked with her since she was first
18 appointed in March of last year. We've been very impressed with
19 the way she has developed from scratch, basically, the Bureau
20 and its regulations.

21 She takes her job very seriously. She's willing
22 to meet with many people. And she's met with us on several
23 occasions to discuss some of our regulatory concerns, and we are
24 pleased to support her confirmation.

25 Thank you.

26 CHAIRMAN PERATA: Thank you.

27 Anyone else? Anybody in opposition?

28 Do we have a motion to approve?

1 SENATOR DUTTON: So move.

2 CHAIRMAN PERATA: Call the roll, please.

3 SECRETARY WEBB: Cedillo.

4 SENATOR CEDILLO: Aye.

5 SECRETARY WEBB: Cedillo Aye. Dutton.

6 SENATOR DUTTON: Aye.

7 SECRETARY WEBB: Padilla.

8 SENATOR PADILLA: Aye.

9 SECRETARY WEBB: Padilla Aye. Perata.

10 CHAIRMAN PERATA: Aye.

11 SECRETARY WEBB: Perata Aye. Four to zero.

12 CHAIRMAN PERATA: Four-zero, congratulations. It

13 wasn't so bad.

14 MS. YANG: No, appreciate it. Thank you.

15 CHAIRMAN PERATA: You're welcome.

16 Darrell, you've come and brought members with

17 you.

18 SENATOR STEINBERG: Thank you, Mr. Chairman.

19 Mr. President, I should say. Thank you Mr. President.

20 Mr. Chair and Members of the Rules Committee,

21 thank you for the opportunity to appear today.

22 First time I've done this, but I agreed to do it

23 because I feel that strongly in support of Mary Nichols and her

24 confirmation here today. And I urge the Committee and the full

25 Senate to support her strongly.

26 And when I say that I'm here to introduce Mary

27 Nichols to the Senate Rules Committee for a confirmation hearing

28 and to express my strong support, the word I would add is again,

1 because the fact is that Mary was unanimously confirmed once
2 before by this august body on September the 10th, 1979, when
3 Senator Mills was Chair of the Committee, and I was a junior at
4 U.C.L.A. The votes were: Mills, Nimmo, Petris, Presley, and
5 Ray Johnson, for those who follow such matters. I hope this
6 Committee will consider acting again in the same vein.

7 It is no exaggeration, we all know this, that the
8 Air Resources Board may be the single most important and
9 influential government -- governmental and environmental agency
10 in the world today. That is in part because this body and the
11 Senate as whole has given it both direction in law and
12 significant authority to clean up the air and to reduce global
13 warming. It is the world leader on clear air programs. It has
14 to be, with California's intractable clean air problems, and
15 with the direction given to it under the State Clean Air Act.
16 It is the vortex of international activity to actually figure
17 out how to set up and operate a comprehensive program to reduce
18 greenhouse gases across this state's vast and complex economy,
19 thanks to the Legislature's passage of AB 32 and other laws to
20 reduce greenhouse gas emissions.

21 In my view, there is no better person than Mary
22 Nichols for this job at this time. She has been a state agency
23 chair, a clean air advocate, federal agency administrator, and
24 has held other positions that helped train her for this job.
25 She knows the clean air and climate programs as well or better
26 than most people -- in fact, probably anyone -- and will fairly
27 consider all points of view on any given issue.

28 And she has the Governor's ear, and the

1 Legislature's hope and confidence that she can get this job
2 done.

3 Now, the Senate has rightfully pushed this
4 administration to match its words with its actions on clean air
5 and climate. It hasn't always been easy. The administration
6 has not always obliged.

7 But I share Senator Perata's, and Senator
8 Padilla's, and Senator Cedillo's concerns with the
9 administration's constant push for Cap and Trade without careful
10 adherence to the law and a careful review of its consequences on
11 agencies like LADWP and SMUD in any own district. And I expect
12 Mary to share and to address those concerns as well, regardless
13 of her appointing authority.

14 I also share the Chair's concerns that we need to
15 do more to clean up pollution in the environmental justice
16 communities near West Oakland and the Ports of Los Angeles and
17 Long Beach, because it's a public health threat and not just an
18 environmental threat.

19 I'm here to support Mary because she is the one
20 appointment most likely to get these hard things done, not just
21 because of the politics of the moment, because she will always
22 focus on the right thing to do.

23 I ask the Committee to give her confirmation
24 favorable consideration. I thank you for opportunity,
25 Mr. President. I appreciate it.

26 CHAIRMAN PERATA: Did you come up here when you
27 were a junior and speak?

28 SENATOR STEINBERG: I did it when I was in high

1 school.

2 CHAIRMAN PERATA: You were a sick child.

3 [Laughter.]

4 CHAIRMAN PERATA: It explains so much, Darrell.

5 [Laughter.]

6 SENATOR STEINBERG: And I still decided to run.

7 CHAIRMAN PERATA: Thank you, Darrell.

8 SENATOR STEINBERG: Thank you very much.

9 CHAIRMAN PERATA: I don't want you to be lonely,
10 will Dr. John Balmes come on up?

11 I want to ask you, who do you consider to be the
12 greatest Russian writer?

13 MS. NICHOLS: Well, my personal favorite is
14 Tolstoy.

15 DR. BALMES: I disagree. It's Dostoesvsky.

16 CHAIRMAN PERATA: You can, if you'd like, make an
17 opening statement.

18 MS. NICHOLS: I prepared an opening statement,
19 which I think has been circulated around. I'm not going to read
20 it.

21 CHAIRMAN PERATA: Thank you.

22 MS. NICHOLS: I'll spare you that.

23 I just want to say, I was here 11 months ago for
24 a prehearing. It's been a very exciting 11 months, and I think
25 a time of a lot of accomplishment at the Air Resources Board,
26 both in our public health regulatory program and in implementing
27 AB 32.

28 I'm just as pleased to be here today as I was

1 then. It's a great place to work, and I'm hoping I'll get to
2 continue.

3 CHAIRMAN PERATA: Thank you.

4 Doctor.

5 DR. BALMES: Well, since I didn't have anybody
6 introduce me, I would like to read my statement.

7 So, first off, Chairman Perata and distinguished
8 Members of the Senate Rules Committee, it's a distinct honor to
9 come before you to seek your confirmation of my appointment to
10 the California Air Resources Board.

11 Senator Perata, I wanted to ask you to introduce
12 me, since you represent my district. But because you are the
13 Chair of the Committee, I thought that might be a bit awkward.

14 CHAIRMAN PERATA: I thought Loni was going to
15 come. She's still hung over from yesterday probably.

16 DR. BALMES: Yeah, I guess so. I asked her.

17 However, I will take this opportunity to thank
18 you, Senator Perata, for your leadership in the area of
19 environmental health. In particular, I would like to
20 acknowledge your sponsorship of SB 1379, the bill signed by
21 Governor Schwarzenegger in 2006, that created a biomonitoring
22 program, which I think was an outstanding effort to better
23 understand the burden of chemical exposures among the population
24 of our state. So, thank you.

25 CHAIRMAN PERATA: Thank you.

26 DR. BALMES: Why am I interested in a position on
27 the California Air Resources Board? Let me tell you a little
28 bit about my background. I'm a practicing physician trained in

1 internal medicine as well as pulmonary and critical care
2 medicine. I practice at a safety net hospital, San Francisco
3 General, where I take care of patients who have little or no
4 insurance and are from low-income, minority communities. So, I
5 see first-hand how disparities impact the health of people from
6 these communities, including environmental exposure
7 disparities.

8 I'm fortunate to be on the faculty of one of the
9 best medical schools in the country, UCSF, where I'm Professor
10 of Medicine and Chief for the Division of Occupational and
11 Environmental Medicine at San Francisco General.

12 So why, as a pulmonary physician, Chief of
13 Occupational and Environmental Medicine? Because the lungs are
14 a major interface between the environment and the human body.
15 And pollutants in the workplace and the ambient environment are
16 inhaled into our lungs with every breath, including probably in
17 this room.

18 I spent the first 30 years of my life in the
19 Midwest and East Coast before ever setting foot in California.
20 My wife, who I met in Connecticut during my pulmonary medicine
21 training, is a native Californian who couldn't wait to get back
22 here. I first visited our great state in 1980, and we moved to
23 L.A. in 1982.

24 It was in L.A. that I became interested in
25 studying the health effects of air pollution.

26 CHAIRMAN PERATA: I bet.

27 [Laughter.]

28 DR. BALMES: The air quality in L.A. is much

1 better now than it was in the early 1980s, in large part due to
2 the California Air Resources Board. But back then, my chest
3 would hurt when I went jogging on smoggy days.

4 I seized the opportunity to come to UCSF in 1986
5 to begin a research program on the respiratory effects of air
6 pollutants. So, for the last 22 years I have conducted research
7 on the effects of ozone, nitrogen dioxide, sulfur dioxide, fine
8 particles, acid aerosols, secondhand smoke, wood smoke, and
9 asbestos.

10 I'm particularly interested in understanding how
11 people with asthma are affected by air pollutants. For example,
12 I'm currently involved with two studies of children with asthma
13 in Fresno, a city with relatively high levels of air pollution
14 as well as high rates of asthma among children.

15 Some of my research has been supported by CARB,
16 and I have worked with agency staff for many years. Through
17 such interactions, I have come to appreciate how much of a
18 precious jewel the Air Resources Board is for California.

19 As has already been stated by Senator Steinberg,
20 CARB is probably the best resourced and best run air quality
21 control agency in the world. It is certainly bigger and, I
22 would say, better than the air division of the U.S. EPA,
23 especially since Mary doesn't run that any more.

24 To have the opportunity to help guide CARB at
25 this particularly crucial time when the new mandate to control
26 the greenhouse emissions that threaten our global environment
27 through climate change -- with the new mandate, it's a challenge
28 that I welcome.

1 I have long been an advocate for clean air. I
2 started advocacy work for the American Lung Association in 1980
3 while still in Connecticut, working in support of the
4 establishment of nonsmoking areas of restaurants. I have
5 frequently testified before governmental bodies about the health
6 effects of air pollution. I have been an advocate for clean air
7 because I consider it my duty to try to translate the scientific
8 knowledge that I've gained from my research on the adverse
9 effects of air pollution into information that policy makers,
10 such as yourselves, can use to better protect public health.

11 That said, I also enjoy the fruits of the
12 California economy. I'm interested in seeing sensible
13 regulation of air quality that does not cripple California
14 business. I think the evidence over the last 50 years during
15 which California has been leading the nation in air quality
16 regulation shows that we can have both cleaner air and a vibrant
17 economy. As much as various stakeholders, sometimes
18 environmental advocacy groups, and sometimes business interests
19 may complain about specific divisions of -- decisions of CARB,
20 in general I think the agency does a pretty good job of
21 splitting the difference.

22 How does CARB do this? Primarily by keeping an
23 open door, by listening to all stakeholders, and trying to
24 maintain transparency in the decision-making process. I
25 support continuing to do business like this.

26 Finally, I'm a father of a ten-year-old boy who
27 loves to play outdoor sports, and the husband of a woman with
28 fairly severe asthma. I want my wife and son to be able to

1 continue to enjoy our wonderful California environment without
2 having their activities restricted by either extreme heat or
3 excessive pollution.

4 The major issues before CARB at this time are
5 control of greenhouse gas emissions, reduction of pollutant
6 emissions stemming from surface goods movement, and poor air
7 quality in the Central Valley. I look forward to working with
8 CARB members and staff to try to address these issues through
9 measures that protect public health, the environment, and the
10 economy.

11 I've only been on the board since January, but in
12 this short time I've been greatly impressed with the leadership
13 of Mary Nichols. She asks the critical questions, is open to
14 multiple views on an issue, listens well to stakeholders, runs
15 public meetings with exceptional skill, and leads the Board's
16 discussions to reach responsible decisions.

17 I hope that you will see fit to grant me the
18 continued opportunity to work with Chairman Nichols and the rest
19 of the Board to improve California's air quality. Thank you.

20 CHAIRMAN PERATA: Thank you.

21 Do either of you have family here? I know the
22 10-year-old's not here.

23 DR. BALMES: He wanted to come. He would have
24 come when the hearing was originally scheduled on April 23rd. He
25 didn't want to miss Field Day today, which is an all-day recess
26 at his school.

27 [Laughter.]

28 CHAIRMAN PERATA: You know where you fit in, in

1 the scheme of things.

2 [Laughter.]

3 CHAIRMAN PERATA: Is it right that if you work 60
4 hours a month, you get \$40,000 a year? Is that accurate?

5 MS. NICHOLS: For regular members of the Board
6 you mean?

7 CHAIRMAN PERATA: Yes.

8 MS NICHOLS: It's considered to be a one-third
9 time job with the reading and the Board meetings that they
10 attend. So, I'm the only full-time member of the Board.

11 Some people think we should all be full-time in
12 light of the responsibilities.

13 CHAIRMAN PERATA: Well, if we had a real serious
14 problem, maybe that would be the case, but since we don't it's
15 part-time.

16 I came before you a while back when you were in
17 Oakland. Subsequent to that time, I have put a meeting of, I
18 think, the appropriate people. One only wonders who they might
19 be. But the issue was Prop. 1B, goods movement, and getting the
20 money out, particularly on the PM problem at the Port of
21 Oakland.

22 The irony is, the biggest fight that's gone on
23 has been from the adjacent residents and the Port over not
24 trains as much as it has been trucks. You know, there are a lot
25 of older trucks. This is not an industry now like it used to
26 be. People are just trying to make, particularly with 5.50
27 diesel, they're trying to make ends meet.

28 We put out billion dollars in that bond, and I

1 know, ironically, that there are probably a number of vendors,
2 but if you had a really good arm, you could throw a baseball and
3 hit a place in San Leandro that manufactures the devices that go
4 on top of these things.

5 So, I'll have this meeting, and everybody will
6 nod and say yes. It's like with MTC and the rest, the usual
7 suspects. They're going to need a little bump now and then.

8 My bumping days are about to be over, so what
9 role can you play in making sure that some of this stuff gets
10 done?

11 MS. NICHOLS: Senator Perata, let me begin.

12 The most important thing, I think, that the ARB
13 needs to do is to get our heavy duty on-road diesel rule in
14 place. Staff has been working really hard came. They came out
15 with a first draft. It met with a lot of resistance from the
16 industry. They indicated that it was too onerous because it
17 looked as though a number of trucking firms, they would have to
18 replace, buy a new vehicle, or at least a used -- new or used
19 vehicle and then replace it again.

20 They've reworked the proposal. They're doing
21 workshops on it right now. But any way you slice it, it's going
22 to be an expensive regulation.

23 And what we really need to do in this state, I
24 think, is, given the fact that our health risk is dominated by
25 these diesel vehicles, and particularly the goods movement piece
26 of it, I think we need to come up with a financing mechanism to
27 help turn over the fleet as quickly as we can.

28 We have had conversations under the auspices of

1 the Governor's Office with the Treasurer, and we're looking at
2 alternative mechanisms that might be used to help finance, since
3 there is an economic benefit to upgrading to a cleaner truck,
4 that could come up with some form of very low cost or no cost
5 loans, get these out to people.

6 But as I think your question indicated, you know,
7 particularly around the ports, we're dealing with in many cases
8 trucking firms that are one truck, or an owner of one or two
9 trucks. And reaching these individuals and getting them into
10 the system effectively is -- is not something that we can just
11 take for granted. We're going to have to work with the ports, I
12 believe, directly. Set up offices on site, get information out
13 to people in various languages, and be really aggressive about
14 bringing the programs to the users if we're going to be
15 successful. And we are working on a program like that in-house
16 right now.

17 CHAIRMAN PERATA: What happens to the billion
18 that was in the bond? The understanding was that that money
19 would be used to retrofit vehicles.

20 MS. NICHOLS: That money is already in the
21 process of being put out the door. We made the first big
22 allocation of it a month or two ago. It's all going to projects
23 that were submitted through the local air districts. They were
24 vetted for cost effectiveness.

25 And I'm proud to say that there was absolutely no
26 opposition to the -- to the grants that we made. We certainly
27 had more applications than we did money to spend, but I think
28 that's a good thing. And the projects that we are funding are

1 excellent projects.

2 In the case of Oakland, there are also projects
3 that will have benefits not just in local region, but in the
4 Valley as well, because we're dealing with trucks that move
5 around the state. So, we were able to demonstrate that we were
6 getting broader regional benefits from these funds.

7 CHAIRMAN PERATA: Would you characterize how it
8 would affect trucks that are in and around the Port of Oakland?

9 MS. NICHOLS: I think what we're talking about
10 there is taking the worst trucks and getting particle traps put
11 on them right away, because that's the way that you can get the
12 biggest bang for the buck.

13 CHAIRMAN PERATA: Doctor?

14 DR. BALMES: No, I would just second your concern
15 about diesel truck emissions being probably a more important
16 problem with regard to West Oakland -- West Oakland community's
17 health than the actual emissions from the rail facilities or
18 port itself.

19 At you know very well, there are multiple
20 freeways, and so that's why the on-road diesel emission
21 regulation that we're struggling to get right is -- is really
22 needed to control the problem, both in Oakland and the Central
23 Valley.

24 CHAIRMAN PERATA: Thank you.

25 Tell us a little bit about the ZEV. You guys
26 took action. Now we've got GM saying that they're going to stop
27 doing this, going to start doing that.

28 Any thought about revisiting that?

1 MS. NICHOLS: Yeah. Of all the issues that I've
2 ever been involved with in the air field, this one has probably
3 been the most difficult in some respects, because the ZEV
4 mandate, the zero emission vehicle sales mandate, is only one
5 piece of the Air Resources Board's emissions control programs
6 that we're trying to use to drive us towards cleaner, more
7 efficient vehicles. We also have our normal, low-emission
8 vehicle program, and we have the Pavley regulations.

9 But for a variety of reasons, mostly because the
10 auto industry hates this program so much because it is a direct
11 sales mandate on them, it has also attracted a huge crowd of
12 followers or people who are interested in it as well.

13 When we made our decision to once again revisit,
14 which we have to do under our own rules every -- every five
15 years, we take another look at this mandate and see how we're
16 doing, and decide if it needs to be adjusted in some way -- we
17 made number of changes to it this time that were designed to
18 make the program more transparent, to keep the -- make the
19 credits -- the situation about companies trading credits more
20 available.

21 But we also did something that was designed to
22 actually increase the number of zero emission vehicles above
23 what was under requirement today. We focused on the fact that
24 we now have plug-in hybrid vehicles about to be introduced by
25 every major manufacturer. Every one of them has -- including GM
26 -- has a vehicle that they're advertising. In the case of GM,
27 it's the Volt that they've been talking up and are ready to
28 bring on line.

1 And so, because we have a relatively clean
2 electricity grid in California, and because these things can be
3 charged up over night, you can take a hybrid, which we know is a
4 very successful, commercially available vehicle, and turn it
5 into an electric vehicle for most purposes. So, we adjusted the
6 mandate to basically ratchet up the number of plug-in hybrid
7 vehicles that would be called for, but also continue minimal --
8 well, relatively minimal, in the thousands, of pure electric
9 battery and hydrogen vehicles. And we kind of got caught up in
10 the crossfire between the advocates of different types of
11 technologies.

12 But we think the result of this regulatory change
13 that we made is going to be that we're going to see about 80,000
14 plug-in vehicles on the roads in California by 2012.

15 Meantime, in the course of going through this
16 review, it became very clear that we need to take another look
17 at the whole set of auto regulations that we have. I mean, we
18 know now as a result of AB 32 and our focus on greenhouse gas
19 emissions, as well as our regular air pollution control
20 programs, that we need to drive this whole industry in the
21 direction of an electric drive vehicle, which could be a fuel
22 cell, or it could be a plug hybrid, or a battery.

23 We don't want to have to take sides among those
24 competing technologies because we actually think each of them
25 has a niche. But we'd like to be able to make sure that we are
26 sending the right signals to the industry about where we're
27 headed.

28 And so, we're undergoing a review process right

1 now. The staff is due back at the end of this year with
2 recommendations for how to take the whole auto program, which is
3 really the heart and soul of the Air Resources Board and what we
4 do, and to try to give us a single program so we don't just deal
5 one -- with one issue at a time, but try to have a more
6 comprehensive approach.

7 CHAIRMAN PERATA: Apropos of that, we have a
8 bunch of different agencies that have some piece of trying to
9 invest some \$400 billion in the new green technology, the new
10 economy.

11 I know it would be bad form for you to say
12 anything negative about the PUC, so I'm not going to ask for an
13 opinion, but I was a little chagrined when Mr. Peevey set out on
14 his own to create still another agency, using money that the PUC
15 has.

16 But I am curious how you would characterize your
17 role, your leadership role, and you must see these things much
18 more clearly than I ever would, about things that should be done
19 differently, and how to get them done?

20 Darrell mentioned that you had the Governor's
21 ear. I was wondering why he was walking around that way.

22 [Laughter.]

23 CHAIRMAN PERATA: But that would be a good thing
24 for you to do, is whisper in his ear, shout, or whatever it
25 takes, to try to get some of that consolidated because whatever
26 role that you have, you have a wonderful bully pulpit. CARB has
27 a lot of standing. Many people don't know what any other agency
28 does, but they know, or they assume that they know, what you

1 do.

2 So, I would urge you to, and not to suggest that
3 you haven't, but to push on that, because as we've seen in
4 talking about it, it's a little vexing, you know, because there
5 are taxes and then there are fees. And some people seem to
6 believe that if it's a fee, it comes out of a different pocket
7 than a tax.

8 As long as we're collecting money and we're
9 spending money, we don't have the luxury of having all these
10 different agencies out there doing their own empire building.

11 We're fungible; just ask the staff. The people
12 that are going to really be presiders are going to be people
13 such as yourselves. We really need to have that kind of push
14 going on.

15 I just encourage you to do that, because you both
16 are very adept at what you do. You have great credentials, and
17 you're not elected. So, people will have a little bit more
18 respect for you, might actually think you know what you're
19 talking about, which we don't encounter all that often. So, I
20 would just encourage you to do that.

21 MS. NICHOLS: Thank you.

22 CHAIRMAN PERATA: I will yield to Mr. Dutton.

23 SENATOR DUTTON: Good afternoon.

24 MS. NICHOLS: Good afternoon.

25 SENATOR DUTTON: You said you have Governor's
26 ear.

27 CHAIRMAN PERATA: Do you want to get that
28 clarified, or do you want to deny that?

1 [Laughter.]

2 SENATOR DUTTON: I'm curious, within the chain of
3 command, does that mean you answer directly to the Governor, or
4 is there somebody that's a go-between?

5 MS. NICHOLS: I have met on a number of occasions
6 directly with the Governor.

7 But the Air Resources Board is a part of Cal EPA,
8 and normally we forward things like recommendations on budget,
9 or positions, you know, through -- through the agency office.
10 So, I think technically I report to the Governor through Cal
11 EPA.

12 SENATOR DUTTON: Okay. I just wanted to clarify
13 that, because I know in some cases the governors in the past
14 have actually had certain people in positions that actually were
15 given the authority, if they wanted to hear directly and not
16 through staff. And I'm just curious if that's the kind of
17 relationship you have, or do you actually have a formal chain of
18 command that you're supposed to follow?

19 MS. NICHOLS: The chain of command, I think, is
20 as I described it.

21 But I would say, since my experience is out in
22 front of you, that, you know, this is the third governor that I
23 have worked under. And certainly in terms of direct involvement
24 and interest in the issues in front of the Air Resources Board,
25 I think this governor has been very, very open and interested in
26 hearing directly from me.

27 SENATOR DUTTON: With regard to AB 32
28 implementation, some of the concerns that some people have had

1 is not so much with the goals and the objectives, but it's the
2 way, how to go about the implementation.

3 Now that you've had a chance to kind of play with
4 it, are we on the proper course in your opinion, or do you feel
5 that there's some areas that need to be given some more research
6 and thought before we actually roll it out? What's your
7 feeling?

8 MS. NICHOLS: Well, Senator, as you know, we're
9 getting ready to release the draft scoping plan June 26th. So,
10 I've been working with staff to make sure that we have that in
11 place.

12 And I think it's fair to say that a lot of
13 thinking has gone into that, not only by ARB staff, but also
14 we've gathered together the work of a lot of consultants,
15 academics and other agencies, to put this draft together.

16 It doesn't answer all the questions that need to
17 be answered before we would actually adopt a final plan. There
18 is more analysis that needs to be done, particularly I believe
19 in the areas of economics. We've done a lot of economic
20 research, a lot of economic modeling, but there's a lot more
21 still to be done. There are questions that people asked that we
22 asked ourselves about where we have a choice of which tool to
23 use, which is going to be the most beneficial, which is going to
24 have the greatest health benefits associated with it, how we can
25 come up with a program that really meets all the tests of AB
26 32.

27 I guess to answer your question more directly,
28 the legislation itself contains, I think, everything that it

1 needs in it in terms of what we, the agency, need to consider in
2 coming up with a plan. It's very clear about how it wants us
3 to go about doing this job.

4 When it comes time to come back with a final
5 plan, there may be pieces in it that will need further
6 legislative action in order to implement. And if we find that
7 as we're developing a plan, we will say that in the plan itself
8 and make it clear.

9 SENATOR DUTTON: Well, I guess from my personal
10 perspective, we're pretty creative at coming up with goals and
11 objectives, or things we want to accomplish. I haven't seen
12 that in some cases we're always that. We don't always take a
13 look at the actual detail of how to achieve it. A lot of things
14 can sound good in theory, but to actually make it all work is
15 another challenge altogether.

16 That's the reason, in at least my impression,
17 that we're relying on you and the other agencies to actually
18 make sure it can work. A lot of us would be concerned about
19 having a failed experience.

20 Now, you said something about the economics of
21 the plan and so forth in determining the economic impact. Can
22 you give me some idea of the thought process? Well, let me back
23 up a little bit.

24 You kind of indicated these are questions. You
25 didn't say it in the sense that you've got answers.

26 MS. NICHOLS: Well, I don't want to take away
27 excitement when the plan is released.

28 [Laughter.]

1 SENATOR DUTTON: Believe me, I'm very excited
2 about it.

3 MS. NICHOLS: We have -- what we've done with the
4 plan, I think, we've said this in public, is that the plan that
5 we have developed analyzes the sources and the tools that we
6 think are available to bring the State of California back to the
7 1990 levels that statute calls for by 2020. And it indicates
8 that there are options that we could pursue, that there's not
9 just one path.

10 We believe that there's sort of a core group of
11 programs that have to be pursued, that need to be pursued, that
12 we should pursue under any and all circumstances. And those
13 include things like our Pavley auto program, the next phase of
14 those regulations which we still have to develop, energy
15 efficiency programs at levels above and beyond what's in place
16 today under our existing rules, and also a renewable portfolios
17 standard again to a higher mandate than what we have today.

18 However, we've also said that there are other
19 options then as far as making up the rest of the program. And
20 those could include a mix of more regulations on different
21 sources that would be directed at very specific types of
22 industries or products. It could be a cap-and-trade program, or
23 it could be an emissions fee program, or a combination of
24 those.

25 And so, what we're trying to do is to really lay
26 out clearly, as we think the law requires of us, not only what's
27 the most cost effective path in terms of dollars per ton of
28 greenhouse gases taken out of the air, but also to look at all

1 the other issues that the statute calls on us to address,
2 including promoting green technologies, the issue of equity, the
3 issue of health benefits and other social benefits to
4 communities around the state. I'm probably leaving something
5 out, but those -- I mean, so, this is a more complex task than
6 the Air Board normally has had to address.

7 SENATOR DUTTON: So, is the work product you're
8 going to put out, as much as I love surprises, the work product
9 you're putting out, once again, you seem to be telling me
10 there's a lot of questions. I understand the thought process,
11 and I'm comfortable with the idea that it's being given a lot of
12 thought.

13 But is the work product actually going to be more
14 than just thought, or is it actually going to be things that
15 have actually been looked at, here's the reason why, and this is
16 the specific recommendation?

17 MS. NICHOLS: It's between the two. In other
18 words, it is a draft, and it's a milestone on the way to the
19 final plan. So, there's a number of elements that we have
20 looked at that we feel pretty firmly that we understand what the
21 right answer is.

22 But there are others where we feel there is more
23 work that needs to be done, and we're just flagging those and
24 saying, you know, we have done a lot of analysis in certain
25 areas, but we don't have all the answers yet, and more modeling
26 or more research will need to be done.

27 SENATOR DUTTON: Now, based on where you're at
28 right now, and the amount of work, and thought, and the

1 politics, and the science, and everything else that's gone into
2 this, once you unroll your draft plan, what kind of work do you
3 anticipate is going to be necessary before you can actually come
4 up with some firm guidelines and regs that actually people can
5 take to the bank, so to speak?

6 MS. NICHOLS: Well, over the course of the summer
7 and early fall, we're planning on an extensive series of
8 workshops, which are going to be seeking input from the public,
9 from affected industries, stakeholders, et cetera, including
10 going out to communities that normally don't necessarily have
11 Air B hearings in them, including some of the most impacted
12 areas of the state from an air pollution perspective.

13 And we're going to be also doing a lot of
14 in-house work, using -- running different models that have been
15 developed, not necessarily used for this purpose before,
16 including: Energy Commission models that are going to help us
17 understand what the impacts of various approaches would be on
18 where power plants would be sited, and what kinds of power
19 plants we would be getting; using the PUC's economic models to
20 understand impacts of various scenarios on the price of
21 electricity; looking at a new model that's been developed with
22 support from the Air Resources Board that attempts to understand
23 the cumulative impacts of emissions on various communities that
24 already have severe air quality problems. And those are just
25 three that come to mind.

26 By October, we're going to have the best we can
27 come up with in that timeframe, and we are going to put out a
28 final plan. Then we're going to put it through a formal hearing

1 process in November, with time also reserved in December so that
2 we can get you the plan that the statute calls for by January 1,
3 2009.

4 SENATOR DUTTON: You said something just then
5 that infers, maybe, that we shouldn't be necessarily locked into
6 not giving a little bit more time if necessary. I get the
7 feeling that you just said this is going to be the best plan you
8 can come up with within this timeframe or something.

9 Should I interpret that as meaning that maybe a
10 little bit more time in some areas might not be a bad idea?

11 MS. NICHOLS: Well, I guess I'm trying not to
12 over sell something that doesn't -- that doesn't yet exist. But
13 it's going to be the best --

14 SENATOR DUTTON: I'm trying to determine if it's
15 going to be long enough --

16 MS. NICHOLS: -- the best plan that the world has
17 ever seen, actually, in this area, in all seriousness. I mean,
18 no one has tried to do as comprehensive a plan as we are now in
19 the process of doing.

20 But I do want to indicate that even when the plan
21 is finished and it's published, you know, with nice covers, and
22 it's over here, that's not the end of the story, because the
23 plan doesn't implement itself. And again, going back to the
24 statute, we have a period of time to actually adopt the
25 regulations that will carry that plan out.

26 So, there's going to continue to be analysis, and
27 studies, and public hearings, and so forth, going through 2009,
28 '10, '11 before this whole thing is actually in place by 2012,

1 which is the deadline for really having the whole program up and
2 running.

3 And that's going to be true whatever approach
4 ends up being the final approach, including -- including a
5 market system, because you don't do a market system without
6 rules. You don't just say, "Okay, guys, go have a market." And
7 I think it's important that people understand that that will be
8 part of the process.

9 So, there's going to be a lot of time in which
10 these things get developed.

11 SENATOR DUTTON: I feel like somebody gave you my
12 script, because I was just going to ask you about market.

13 MS. NICHOLS: I was guessing.

14 SENATOR DUTTON: When you go through AB 32, it
15 makes reference to a market-based implementation, and so forth.
16 It's like 10 or 15 different areas where it mentions that.

17 In the plan that you're rolling out then, I know
18 there's been some discussion, because we got a report in the
19 Energy Committee regarding cap-and-trade and so forth.

20 Is the market implementation part of the plan, is
21 that going to kind of be laid out at that point, or is there
22 still going to be lot more questions about how to best launch it
23 in consideration of the economy and things like that?

24 MS. NICHOLS: We describe a cap-and-trade
25 system. And we also lay out a number of the questions that
26 you'd have to answer. And we propose some answers in the draft
27 plan as to how the ARB would go about implementing a program
28 like this, if it's what we end up doing.

1 But we do not make a firm commitment to do that
2 kind of a program because we think that there are reasons why,
3 after we hear all the evidence, we might decide to have a
4 smaller market, or a different kind of market.

5 And one of the reasons for that, just to be
6 clear, is that although I don't expect that we're going to have
7 the answers by next fall, the reality is that Congress is going
8 to pass a national climate bill probably next year. It might
9 take a little bit longer than that. And a new President again,
10 whoever it is, is committed to sign national climate
11 legislation.

12 And we want to make sure that whatever we do is
13 not only helping to lead the way to what we think a good program
14 would be, but also is going to be compatible with whatever that
15 agenda is, because as you and others have pointed out in the
16 past, we're not an island either economically or
17 geographically. And we're very much eager that we will be
18 participants in the national and international program. We want
19 to be leading the way here because we think that's to our
20 benefit.

21 SENATOR DUTTON: I know there's some concerns
22 about local municipalities, and you're going to be talking about
23 that so I'm not going to go into that.

24 But the whole cap-and-trade thing has obviously
25 got some concerns, so I'm going to ask you about some other
26 areas.

27 MS. NICHOLS: Could I just, Senator, take
28 advantage of one thing you said? You mentioned market

1 mechanisms and how they're referred to in the statute.

2 SENATOR DUTTON: Well, market driven
3 implementation. I remember seeing it.

4 MS. NICHOLS: I just wanted to say that although
5 we also jump to cap-and-trade because that's the one that's been
6 discussed the most, it's been advocated by many people, but we
7 use market mechanisms in ARB regulations today. I mean, most of
8 our regulations have some aspect in them that allows for
9 averaging, that allows for companies to trade. Even in our zero
10 emission vehicle program, companies can earn credits by selling
11 more clean vehicles sooner, and then trading among themselves.

12 So, I just don't want people to think that when
13 we talk about market mechanisms, that only means a
14 cap-and-trade.

15 SENATOR DUTTON: I would assume that there's
16 going to be some tax credit type programs you'll be looking at,
17 things of that nature.

18 I've just become very sensitive and very much
19 more aware than I ever was before that in other areas where
20 cap-and-trade has been used, there's been a tremendous amount of
21 abuse, and the potential for manipulation.

22 And I have no doubt in my mind that somebody will
23 figure out how to make a profit. I'm just concerned that the
24 public definitely gets the true benefit out of it. So, that's
25 where my concern is.

26 Just a couple more questions that have to do with
27 the goods movement emissions reduction plan. I've had several
28 Senators approach me, and I know the challenge. I worked really

1 closely with Senators Perata and Torlakson on putting together a
2 transportation bond that we felt would be very comprehensive,
3 very state beneficial, and so forth. And so, we've been deeply
4 concerned about people trying to change what the intention was
5 on some of those pots of money.

6 But there has been some that are concerned about
7 the allocation of the first money that was released with regards
8 to air quality and as it relates to goods movement.

9 Could you maybe share a little bit about some of
10 the thought process that went through that as far as where maybe
11 some of the misconceptions may have come about?

12 I think the basic parameters for how it was
13 supposed to be dealt with, there was some basic understandings,
14 but maybe you could just share with us.

15 MS. NICHOLS: Sure. We were very well aware of
16 the fact that with a billion dollars, that actually doesn't go
17 as far as you might think it should when it comes to dealing
18 with --

19 SENATOR DUTTON: And by the way, most of us knew
20 that that was not a fully funded deal. This was supposed to
21 show a serious commitment on the part of the state to deal with
22 some of these issues.

23 MS. NICHOLS: So, for the first -- the first
24 thing that we did was to try to come up with an allocation
25 formula that we could air publicly, and we did go through a very
26 public process of developing the guidelines for how the money
27 would be divided up.

28 And we basically said we would do a regional

1 allocation first, and then we would look at proposals from
2 within those regions aimed at those funding targets.

3 And basically, the proposal that the staff came
4 up with, that they developed, took the -- the issue of how
5 severe the air quality problem in that air was, how far they
6 were from what they needed in terms of reductions to meet their
7 state implementation plan requirements, and also the numbers of
8 people that were exposed to unhealthful air directly as a result
9 of the -- of the goods movement emissions.

10 And using that formula, we came up with, of
11 course, the largest allocation in the South Coast Air Basin,
12 because of its size, and the ports, and the trucks moving
13 through the whole area.

14 The second largest was to the San Joaquin Valley,
15 which is heavily impacted by goods movement.

16 And then the Bay Area was third, and San Diego
17 with quite a small but still, you know, a certain amount of
18 funding available, especially to deal with all the port and
19 cross-border traffic there.

20 That went through a hearing process, and it
21 was -- no one I would say was satisfied, but everyone felt that
22 it was a pretty fair formula.

23 But the San Joaquin Valley, which as a serious
24 air quality problem which is largely attributable to vehicles,
25 wanted to try to make a case for a higher percentage allocation,
26 which basically would have come out of the share of the South
27 Coast. And they made a number of arguments which had to do with
28 how we calculated the numbers of trucks, which models we were

1 using for evaluating how many trucks there were. And I think,
2 you know, they made a very impassioned plea on that, and brought
3 a lot of resources to bear on this.

4 And I think at one point there was some
5 confusion, because staff prepared an alternative to their
6 original recommendation that had gone through the process which
7 would have taken some funds and reallocated them to the Valley.

8 And when that came before the Board, and we
9 listened to all the arguments, we stuck with the original staff
10 recommendation. So, that was what we ended up doing.

11 SENATOR DUTTON: Could that maybe have given
12 somebody -- and you can chime in, too, if you'd like -- but do
13 you think that might have given somebody the impression that
14 there were some other forces at work?

15 MS. NICHOLS: Well, you know, I suppose people
16 will always think when there's money being divided up that
17 politics would play a role in it, but we went to the most
18 extreme lengths I've ever seen done to try to come up with a
19 rational basis for this thing that would -- that would be as
20 free of that kind of ability to influence that is possible.

21 And I know there was probably chagrin in a number
22 of quarters about that, you know, where people might have felt
23 that, you know, based on political influence that, they should
24 have been able to get more.

25 But I think the process that we came up with was
26 fair. Dr. Balmes was there, too.

27 DR. BALMES: I was just going to say, Senator
28 Dutton, that that was my first Board meeting, and the first time

1 I had to vote on anything important. And I was the first vote,
2 because they start with the top of alphabet.

3 And I was sitting between two Board members from
4 the Central Valley. And there were more politicians that had
5 testified than I really expected. I'd been at other Board
6 meetings as an expert before.

7 SENATOR DUTTON: Was it televised?

8 [Laughter.]

9 DR. BALMES: It was televised.

10 But there was money on the table.

11 But I do want to second what Chairman Nichols
12 said.

13 We did finally go with what -- the Board voted on
14 what the staff had proposed and had gone through a very
15 transparent process, though there was an alternative considered.
16 And I was the first No vote on the alternative.

17 SENATOR DUTTON: Do you recall during that
18 committee hearing, there was -- it's said to me second-hand,
19 that there was a comment made that Legislators appearing in
20 support was not helpful concerning the community interests, and
21 so forth.

22 Do you recall that? I don't know first-hand.
23 This was reported to me.

24 MS. NICHOLS: I was chairing the meeting. And I
25 assure you that we called on the Legislators as soon as they
26 arrived. And we, I believe, treated them with courtesy, as they
27 would -- as we would hope to be treated similarly. And that we
28 listened to do their views, and we were -- you know we were

1 unhappy that we weren't able to satisfy them.

2 But basically, the people who came over, came
3 over to try to make sure that we were aware that the Valley has
4 very bad air quality, and that they really need help in getting
5 it cleaned up. And we are aware of that.

6 And since that time, I've met with some of the
7 members and also with local elected officials, including Mayor
8 Autry, who was one of the more dramatic, inspiring speakers who
9 came. And we've assured them we will do whatever we can to find
10 funds in the Moyer program, in new rules that we may develop
11 where we could possibly come up with additional funding, to help
12 them with their problem.

13 But the bottom line was, with this particular pot
14 of money, you know, we thought we needed to have a formula that
15 was really fair and seemed to be fair on a statewide basis,
16 because this is a statewide issue and concern.

17 SENATOR DUTTON: I'm assuming you're continuing
18 to have meetings with Legislators' offices --

19 MS. NICHOLS: Yes, absolutely.

20 SENATOR DUTTON: -- that are in that area and so
21 forth.

22 Just a final area here would be under the use of
23 scientific studies in order to help draft the goods movement
24 emissions reduction plan and so forth.

25 Could you give me an idea of how the decision was
26 made as to what studies would have been used, or have been
27 considered, you know, brought into consideration for use in
28 developing the plan? Is there a particular type of study you

1 looked at? Is it a national model or a regional model?

2 MS. NICHOLS: I'm sorry, which plan?

3 SENATOR DUTTON: The studies, the scientific
4 studies that you used when you came up with the plans.

5 MS. NICHOLS: The goods movement plan?

6 SENATOR DUTTON: Yes.

7 MS. NICHOLS: I just wanted to make sure.

8 SENATOR DUTTON: I'm sorry, right. Sometimes I
9 mumble.

10 MS. NICHOLS: No, no. I just -- you started out
11 on that path, but I wasn't sure.

12 We have assumed the validity of the -- of the air
13 standards that are federal standards and the state standards
14 that exist today based on all of the review processes. And so,
15 the goods movement plan is addressed -- is aimed at meeting
16 those standards.

17 I know that there's some backlash now coming from
18 some who are claiming that somehow diesel is not as much of a
19 health risk as it has been found to be in the past by the
20 scientific review panel, by the -- by our own science advisory
21 committees.

22 And we have no basis at this point to think that
23 those standards need to be changed, or that they are too weak.
24 And in fact, just last month we were presented with a draft
25 document, which is now out for peer review and public review,
26 that indicates that the health risk of diesel is worse than we
27 had previously assumed it to be.

28 So, I know it's always easy -- you know, part of

1 science is critiquing studies and so forth, but I think we're on
2 very solid ground in terms of the priority that we've placed on
3 diesel emissions from the health perspective.

4 SENATOR DUTTON: These studies, were they
5 national or were they actually based on California --

6 MS. NICHOLS: Both. I'm sorry, both.

7 SENATOR DUTTON: -- or the western United States?

8 MS. NICHOLS: Both. The studies that we've used,
9 many of them are done within the State of California, but there
10 are also national studies as well.

11 SENATOR DUTTON: What was the date of the draft
12 plan? When is that going to come out?

13 MS. NICHOLS: June 26.

14 SENATOR DUTTON: Thank you. Appreciate it.

15 CHAIRMAN PERATA: We will take a ten-minute
16 break.

17 [Thereupon a brief recess
18 was taken.]

19 CHAIRMAN PERATA: Senator Padilla, do you want to
20 grill them?

21 SENATOR PADILLA: Thank you.

22 I just want to thank Senator Dutton for setting
23 up a couple issues that I wanted to raise today.

24 Chairwoman Nichols, we've had a couple
25 conversations, both in my office as well as in the recent Energy
26 Committee hearing that Senator Dutton referenced, particularly
27 about the cap-and-trade proposal that has come about.

28 We had chance in that hearing to talk about how

1 either it was premature, not completely cooked, if you will.
2 And certainly when it was first revealed or unveiled, not done
3 so in the proper context, given other efforts.

4 But sort of taking a step back and in a big
5 picture comment, is it or is it not true that it's AB 32 itself
6 that's the context for a lot of these conversations and
7 proposals?

8 MS. NICHOLS: Yes, that's correct.

9 SENATOR PADILLA: If I read AB 32 correctly, it
10 specifically states that the Air Resources Board is the lead
11 agency charged with implementation, rule making, et cetera.
12 Would that be correct interpretation?

13 MS. NICHOLS: That is correct.

14 SENATOR PADILLA: So just to be clear, and beyond
15 a shadow of a doubt here, it's you as Chair and the Board that's
16 in the driver's seat here.

17 MS. NICHOLS: Yes.

18 SENATOR PADILLA: I wanted to emphasize that
19 point only because in that hearing, we talked about
20 cap-and-trade, I think, in a much more appropriate context of,
21 first and foremost, conservation and energy efficiencies that
22 have been achieved and can still be achieved.

23 Second, renewables, and the success we've had
24 thus far, and how much the renewable portfolio standard will
25 play in achieving emission reductions, greenhouse gas reductions
26 specifically.

27 But if that is the case, there certainly still
28 remains a lot of pressure, at least from my observation, towards

1 these market-driven mechanisms.

2 So, if you agree that you're in the driver's
3 seat, and there seems to be a lot of pressure or forces toward
4 cap-and-trade and other market mechanisms, please share with
5 this Committee how you intend to be able to push back on those
6 pressures and forces, and still move us in a direction of AB 32
7 implementation and compliance in the context that was shared
8 with the Energy Committee recently?

9 MS. NICHOLS: Well, Senator Padilla, as you know,
10 the Governor has spoken very enthusiastically about market
11 mechanisms. And at the time he signed AB 32, he spoke about a
12 cap-and-trade system. And he appointed a market advisory
13 committee, or actually it was done through Cal EPA.

14 So, there has been work done on this issue
15 outside the realm, if you will, of the Air Resources Board that
16 has been presented to us. But it's been made very clear that at
17 the end of the day, the plan has to be adopted by the Air
18 Resources Board.

19 And in my conversations with the Governor, I've
20 explained to him that -- and not that -- you know, I wasn't
21 lecturing him, but I wanted to let him know that there are some
22 real concerns about cost effectiveness and about the viability
23 and fairness of some forms of cap-and-trade systems that have
24 been used in the past, including the European system, which
25 started off with some -- some real problems in terms of the way
26 that the allowances were allocated, and led to a collapse in the
27 market for a period of time, as well as a very slow pace in
28 terms of getting actual reductions. And that this would not be

1 something that we would favor doing for the State of
2 California.

3 I've also had a chance to share with him my
4 experience, having worked at U.S. EPA during the time of the
5 acid rain trading program, which I think is generally regarded
6 as being the most successful of any trading program that has
7 been implemented to date, and the fact that that was a market
8 that only came into existence after very extensive work was done
9 to make sure that the measurement and monitoring systems, and
10 the enforcement systems, were completely worked out in advance.
11 And as a result of that, there has not been any breath of any
12 scandal in terms of manipulation of that particular market, but
13 it was a very limited market. It only applied to a very
14 well-defined group of power plants, and not to anybody else.

15 And what we're talking about doing is
16 obviously -- potentially could be, you know, much more
17 extensive than that.

18 So, there's just a lot of -- there's a lot of
19 issues and questions to be fleshed out before a decision would
20 be made in this regard.

21 And I think that the best assurance that I can
22 give as far as how the ARB would approach this issue, is that we
23 have, I think, a good, proven track record of having approached
24 issues that are complicated, and that affect a state which is
25 itself very diverse in terms of urban versus rural, and wealth
26 and poverty in various areas, and so forth, and done it in a way
27 that advanced the cause of cleaning up the air, and didn't --
28 not only didn't bankrupt the state, but actually has, I think,

1 in a number of ways, contributed to the state's being a
2 desirable place for people to do business and foster businesses,
3 and so on.

4 And we're trying to bring that same kind of
5 thinking to this -- to this, and the best way to do that is to
6 have the most open process possible and make sure that what we
7 end up with is really something that is sustainable.

8 We may makes mistakes, but if we -- we probably
9 will make some, given the size of the task. But if we can do
10 this process in a way that is seen as being fair, and if we can
11 leave ourselves enough openings so we can correct any mistakes
12 that we make, I think we will not only get through all of this,
13 but we'll actually do it in a way that Californians will be
14 proud of. And I think that's what AB 32 meant to be.

15 I just looked up, I think it was actually in a
16 response to a completely different question that you or your
17 staff raised, this question about the public outreach, and the
18 kind of public engagement that we've had in this program.

19 When the ARB opened up a web site and asked the
20 public for suggestions about implementation of AB 32, we got
21 15,000 individual, separate comments coming in from different
22 people in different sectors.

23 I don't know how -- I don't know if there's any
24 precedent for something like that. I mean, sometimes we get
25 letter writing campaigns and so forth, but in terms of
26 individuals actually sitting down and thinking of proposals that
27 they wanted to bring, I think that's pretty amazing.

28 I think what it indicates is that there's a lot

1 of public scrutiny, and that's what will keep us honest.

2 SENATOR PADILLA: Senator Dutton, a little cut
3 and paste, and there's your report, 15,000 proposals.

4 Let's go back to again this cap-and-trade in the
5 context of conservation, efficiencies, and renewable energies.

6 Without giving away the surprise of your report,
7 can you at least tell us if cap-and-trade is an element of it or
8 not? And if so, are we talking about 50 percent of the
9 reductions being attributable to market mechanisms, or 10
10 percent, or 90 percent? To what extent do we rely on
11 conservation efforts, or renewables?

12 MS. NICHOLS: Well, I guess there's sort of two
13 ways of looking at it.

14 First of all, some sectors might be included both
15 under mandatory regulation and be in a cap-and-trade program.
16 And the utility sector would be a logical candidate for that
17 because they are such a big source of greenhouse gas emissions.

18 But within that sector, how much of it would be
19 achieved through direct regulation versus some additional market
20 program that would be put on top of it, I think we've indicated
21 that we think that something like 60 percent of the reductions
22 are going to come through direct regulation. That's a very
23 rough guesstimate, but as of the original first draft of the
24 scoping plan, just counting up the things that are already in
25 place, so I guess --

26 SENATOR PADILLA: Is there an RPS part of that 60
27 or not?

28 MS. NICHOLS: Yes.

1 SENATOR PADILLA: Did I cut you off?

2 MS. NICHOLS: No, I didn't mean to filibuster. I
3 was really trying to answer your question.

4 SENATOR PADILLA: Did you want to answer?

5 DR. BALMES: Well, I just would echo Chairwoman
6 Nichols' point about it's been an open process, and, you know, a
7 still evolving process.

8 And we had an AB 32 scoping plan workshop last
9 week. And I have to say, the concept of cap-and-trade, I don't
10 have a problem with fitting into a portfolio of approaches, as
11 you mentioned, conservation, renewables.

12 But I have to say, I came away from the workshop
13 that we had last week with a better understanding, not a
14 complete understanding, but a better understanding of how a
15 cap-and-trade program could help in the overall portfolio.
16 Because there was an economist from the European Union who
17 talked about how they screwed up initially, but then they feel
18 like they've got it working much better now.

19 And then there was a gentlemen from the U.S. EPA
20 talking about the NOx and sulfate program, and how that's
21 actually saved money. The power companies are actually happy
22 with it because it's cost them a lot less than they thought.

23 SENATOR PADILLA: Well, I know there's folks out
24 there who are just opponents of cap-and-trade, no matter what
25 shape or form that it's in. There's some folks who believe,
26 hey, this is the way to go, and most people are somewhere in the
27 middle.

28 If cap-and-trade is part of the portfolio here,

1 part of the strategy here, I think we're eager to know, A, the
2 details because the devil's always in the details. And B, is it
3 a primary element, is it a secondary element, or is it a
4 tertiary element in the context of other categories of
5 efforts?

6 A big concern I raised in committee was how do we
7 even begin to consider some sort cap-and-trade mechanism without
8 undermining the other two that have been painted to me as our
9 primary efforts, those being conservation and renewables?

10 MS. NICHOLS: Right.

11 SENATOR PADILLA: Because when people are making
12 their dollars and cents calculations, they're going to be driven
13 by bottom line.

14 Note a specific concern, because I say the
15 devil's always in the details. Again, something we discussed in
16 committee; something we discussed in my office.

17 I represent the City of Los Angeles, as does
18 Senator Cedillo. And 99 percent of my constituents live in the
19 Los Angeles Department of Water and Power service territory.
20 They're the largest municipal utility, but certainly not the
21 only municipal utility, with concerns about mandatory
22 participation in whatever cap-and-trade mechanism might be
23 adopted.

24 More specifically, the concern isn't just the
25 distinction between municipal utilities and public dollars
26 versus investor-owned utilities, but the possibility of sort of
27 having to pay twice for emission reduction and greenhouse gas
28 reduction.

1 Los Angeles has taken upon itself to adopt just
2 as an aggressive if not more of an aggressive renewable goal,
3 and that comes with a cost. And now they're faced with the
4 possibility of having that same fixed cost to achieve where they
5 want to be, we want them to be, we all want to be, while at the
6 same time paying into some asset reallocation fund. It's going
7 to make that carbon reduction or that renewable electron twice
8 as expensive.

9 That doesn't make sense.

10 MS. NICHOLS: I would agree that if a program was
11 implemented that way, it would not make sense, and it probably
12 wouldn't be effective.

13 You know, I think a lot of the of the
14 consternation that arose as a result of the PUC and Energy
15 Commission proposed decision that they came out with had to do
16 with the fact that, though the PUC is an agency that only
17 regulates investor-owned utilities, and they really don't have a
18 great appreciation for the publically owned utilities sector,
19 and needless to say, from my experience, having been not only a
20 customer but actually a board member Of LADWP, probably avoiding
21 PUC regulation was a pretty paramount concern because, you know,
22 we thought our board was the overseeing agency.

23 So, I think there's a basic disparity here, not
24 just in terms of who owns it, and the fact that the municipal
25 utilities are -- their customers are their owners in a
26 completely different way than in the investor-owned utility
27 world, but also because of the way that did the deregulation in
28 California worked out. The investor-owned utilities don't own

1 their own generating facilities in the same way that the
2 publically owned utilities do.

3 And so, in their effort to try to design a system
4 that would be -- that would cover everybody, I think the initial
5 impression was that the PUC was coming up with a system that
6 would -- that would have the kind of redistribution effect that
7 you were describing.

8 We will not adopt a program like that, I can
9 promise you.

10 SENATOR PADILLA: What was that?

11 MS. NICHOLS: I said we will not adopt a program
12 that does that.

13 DR. BALMES: She promised.

14 SENATOR PADILLA: Thank you.

15 And I understand from the initial draft
16 recommendation to that what has become the final recommendation,
17 it was amended somewhat, but I'm sure that's not even the final
18 product.

19 MS. NICHOLS: There's a lot more work that needs
20 to be done.

21 And I think one of the things that I've asked the
22 PUC is to not send us another thing that looks like a decision.
23 You know, what we want is their staff work, and let's --

24 CHAIRMAN PERATA: What kind of response did you
25 get?

26 [Laughter.]

27 SENATOR PADILLA: Two more issues. One, still in
28 the cap-and-trade arena, concerns about environmental justice.

1 While we all share and breathe the same air,
2 certainly the sources of pollution and emissions start in some
3 places more than others, and impacts certain locations more so
4 than others.

5 What elements of not just for cap-and-trade, but
6 your entire AB 32 proposed plan, or plan soon to be unveiled,
7 how do you incorporate into that protections for communities
8 that have disproportionately been impacted by contamination?

9 MS. NICHOLS: I think probably the most important
10 element of this is to look at the program and see where we can
11 highlight or emphasize programs that have a public health
12 benefit as well as a greenhouse gas emissions benefit, and to
13 prioritize those first.

14 And so, for example, with the port
15 electrification rule that we adopted several months back, that
16 was a rule that had been originally recommended by the
17 environmental justice community as a -- as a rule that we should
18 be looking at as part of our early action program under AB 32.
19 And the previous board had declined to do that on the grounds
20 that if you looked at it only from the perspective of greenhouse
21 gases, it's a very expensive rule for the amount of reductions
22 that you get.

23 And when I joined the Board, one of the things
24 that we changed was the standard that we were applying to these
25 decisions, so that in looking at cost effectiveness within the
26 context of AB 32, we take into account the benefits that we're
27 getting from an air quality perspective and a public health
28 perspective.

1 That changes the whole approach in a way that
2 will most directly benefit low-income communities.

3 I think the other thing I would say -- I can tell
4 Dr. Balmes has something to add, so I'll be quiet here.

5 But I think that the -- that the programs that
6 deal with energy efficiency are also programs that are directly
7 likely to benefit low-income communities as well because these
8 are also, in many cases, households that -- where buying energy
9 is a high -- high portion of their budget. So, anything that
10 reduces the need to pay for more electricity is a good deal.

11 DR. BALMES: I was just going to say that in my
12 written responses to the Committee's questions, that I
13 highlighted an area of particular interest to me as a board
14 member, is the issue of environmental justice.

15 And I think Chairwoman Nichols has already --
16 probably had to deal with too many of my questions in that
17 regard in meetings.

18 But I just say, I totally agree with you, that in
19 our efforts to control greenhouse gas emissions and the other
20 pollutants before the Board, that we have to make -- have
21 priority with regard to do most impacted communities. And I
22 actually think AB 32 specifically has language about that.

23 SENATOR PADILLA: I'd invite you both out, not
24 just to my district generally, but specifically an area targeted
25 by the City of Los Angeles as an environmental justice zone,
26 parts of Sun Valley, Pacoima, that is home not just to power
27 plant, but also an airport, railroad line, landfills, a couple
28 of factories, a lot of wrecking yards, on and on and on, in a

1 very concentrated area.

2 The last couple of questions, and it's a
3 different topic, I want to either bring to your attention or see
4 what you know about the flex fuel vehicle purchases by the State
5 of California.

6 From Will Bush, the head of the Department of
7 General Services, who was here just a few weeks ago, talking
8 about the millions of dollars that the state has sunk into the
9 purchase of flex fuel vehicles. In his explanation then, it was
10 as a result of sort of a federal mandate for flex fuel vehicle
11 purchases.

12 It makes no sense to me to have thousands of flex
13 fuel vehicles in our fleets with no flex fuel actually being
14 available. We pressed him then about seeking a waiver from the
15 federal requirement. At the time he said that it's nearly
16 impossible to get a waiver.

17 We did some additional research since then, which
18 shows data to the contrary, including the Department of Water
19 and Power, who successfully applied for a waiver.

20 It seems that in the near term -- automotive
21 technology is moving in a much better direction years from now,
22 but near term, much more of an environmental benefit to be
23 gained by investing in hybrids as opposed to flex fuels.

24 Is that on your radar? And how is that part of
25 your work?

26 MS. NICHOLS: Well, first of all, I agree with
27 you. One of the -- one of the areas that we are in litigation
28 with the federal government about, you know, is our waiver to

1 enforce the Pavley regulations.

2 One of the Bush administration's arguments about
3 why we don't need to have our greenhouse gas emissions program
4 for automobiles is that they say that the CAFE, the new CAFE
5 rules are as good. We've published numerous calculations that
6 indicate that that's not true.

7 But one of the things about the CAFE rules which
8 we object to vehemently is, they claim credit for these flex
9 fuel vehicles, even when they're running on gasoline. That's
10 just dishonest as far as I'm concerned.

11 Unfortunately, I think the State of California
12 made an error in going out and purchasing all those flex fuel
13 vehicles without having the ability to actually get the fuel to
14 them. And I understand that they -- there have been some
15 discussions under way about putting in some more E-85 stations,
16 which at least would help solve that particular problem.

17 SENATOR PADILLA: Well, some discussions, but
18 from my understanding, there's been discussions of some umpteen
19 additional stations planned for the state, with no specific
20 timetable for actually bringing these additional stations on
21 line. And some umpteen stations certainly won't meet the need
22 of the 30,000-plus flex fuel vehicles in California on the
23 roads.

24 MS. NICHOLS: It would help with some of them.

25 SENATOR PADILLA: So, we have a far way to go.

26 Having heard you, Chairwoman Nichols, the next
27 time you have the Governor's ear, to whisper this into it.

28 MS. NICHOLS: I just have to share this story.

1 I went to Switzerland a couple of weeks after I
2 was appointed to this job. I had been invited when I was a
3 Professor at UCLA to go give a speech.

4 SENATOR PADILLA: Got to keep an eye on those
5 bank accounts.

6 MS. NICHOLS: Right. Well, unfortunately, I
7 didn't have a bank account, but I did have an opportunity to
8 make a speech in Geneva, and it actually got covered in the
9 local press in French. And it says, the headline says,
10 "Schwarzenegger Sends His Right Arm to Geneva."

11 [Laughter.]

12 MS. NICHOLS: So, I could have his ear. I could
13 be his right arm.

14 In any event, I agree that it's a concern, and we
15 should be doing something about it.

16 SENATOR PADILLA: Thank you.

17 CHAIRMAN PERATA: All right. I see all of you
18 want to come up here and for the record say how wonderful these
19 two people are, so when you go before the CARB Board, they'll
20 remember you.

21 [Laughter.]

22 CHAIRMAN PERATA: I want to assure you, it's
23 unnecessary. You could just say who you are. You don't have to
24 say glowing things and all that, because we have one more
25 gentleman who's been sitting here patiently. He has a long way
26 to go home.

27 Now having said all that, anybody who wants to
28 come up here?

1 [Laughter.]

2 MS. NOTTHOFF: Ann Notthoff with the Natural
3 Resources Defense Council.

4 I think the conversation this afternoon has been
5 great evidence of the depth of both these candidates' knowledge
6 about the issue, and their open-mindedness.

7 We urge confirmation.

8 CHAIRMAN PERATA: Thank you.

9 MS. HOLMES-GEN: Chairman Perata, Members, Bonnie
10 Holmes-Gen with the American Lung Association of California.

11 We, of course, enthusiastically support both the
12 confirmation of Dr. Balmes and Chairman Mary Nichols.

13 I just wanted to note that particularly our
14 organizations, the American Lung Association and our medical
15 section, the California Thoracic Society, have worked very
16 closely with Dr. Balmes over the past 15 years, as he's been a
17 volunteer with our organization. So, we have some personal
18 experience with his tremendous scientific expertise and
19 commitment to improving lung health.

20 And we think both individuals here are tremendous
21 public servants and have the reputation, experience, and
22 expertise to provide tremendous leadership for this world-class
23 air quality agency.

24 We urge their confirmation.

25 CHAIRMAN PERATA: Thank you.

26 MR. PETERS: Hello, Mr. Chairman, Senators.

27 I'm Charley Peters, Clean Air Performance
28 Professionals.

1 We certainly love to see the possibility of
2 considering the tax on the use of corn ethanol in California.
3 We think that could certainly lower the price of gasoline today
4 and food, and have -- leave a lot more water for us. It's been
5 a very hot issue quite recently, and we'd certainly love to hear
6 some answers on that possibility.

7 CHAIRMAN PERATA: Thank you.

8 MR. CARMICHAEL: Senator Perata, Members of the
9 Committee, Tim Carmichael with the Coalition for Clean Air, in
10 straight-on support of both of these candidates' confirmation.

11 I just want to share one comment. Senator Dutton
12 brought up an experience of some Members of the Legislature at
13 an Air Board meeting not too long ago.

14 But I would encourage any of you to visit an Air
15 Board meeting in the future, because I think both of these
16 members, as much as anybody on the Board if not more so, ask
17 tough questions of the staff, ask tough questions of the
18 audience, and really think about the issues before they vote.

19 And just one quick analogy. At the last Board
20 meeting, or two Board meetings ago I guess it was, there was a
21 technical presentation on the research that ARB was funding. And
22 Dr. Balmes was able to add into the conversation and translate
23 very technical information into understandable information. You
24 could see the eyes of the Air Board members start to clear up,
25 from very glazed over to, oh, I really understand this now that
26 Dr. Balmes has explained it.

27 And that's just an example of how much these two
28 bring to the Board. We really -- I encourage your support for

1 them. Thank you.

2 CHAIRMAN PERATA: Thank you.

3 MR. KALB: Chairman Perata and Senators, Dan
4 Kalb, the Union of Concerned Scientists.

5 I first want to say that the engineers and
6 scientists at the Union of Concerned Scientists thoroughly vet
7 all -- all nominees to the Air Resources Board and other boards
8 that have technical expertise requirements.

9 And when our staff vetted the experience and
10 qualifications of Dr. John Balmes, we feel the administration
11 hit a home run in this appointment. It's not easy to replace
12 Dr. Henry Gong, who was on the Board for so long with a
13 distinguished career, but we think the appointment of Dr. John
14 Balmes is a very strong appointment. We urge his confirmation.

15 We also obviously support, very strongly support,
16 the confirmation of Chairwoman Mary Nichols. She, as was
17 implied earlier, she's certainly earned the respect of a broad
18 array of stakeholders, not just on the Air Resources Board, her
19 work there, but throughout her career. And she's done so while
20 still maintaining a positive -- being a positive force in
21 clearing the air and protecting the environment for generations
22 to come.

23 And we urge confirmation of both these nominees.
24 Thank you.

25 MR. MAGAVERN: Good afternoon. Bill Magavern
26 with Sierra Club California in support of the confirmation of
27 both Chair Nichols and Dr. Balmes.

28 These are excellent appointees, and for the sake

1 of our air and our atmosphere, we really need to keep them on
2 the Air Board.

3 CHAIRMAN PERATA: Thank you.

4 MS. SOLIS: Silvia Solis on behalf of the City of
5 Los Angeles, Mayor Antonio Villaraigosa.

6 The Mayor strongly supports her nomination to the
7 California Air Resources Board. In 2005, she was appointed to
8 Board of Water and Power Commissioners, where she helped lead
9 the transformation of LADWP into -- which is the largest
10 municipal utility in the country, to a greener utility. Under
11 the commission's leadership, DWP will get 20 percent of its
12 electricity from renewable sources by 2010, and play a major
13 part in getting the City to reduce its goal of greenhouse gas
14 emissions by 35 percent below 1990 levels by 2030.

15 The Mayor believes and is confident that
16 Ms. Nichols will provide the leadership that CARB needs,
17 particularly at this time of AB 32 implementation.

18 Thank you very much.

19 CHAIRMAN PERATA: Did you takes City's plane
20 up here today?

21 MS. SOLIS: No.

22 [Laughter.]

23 MS. VENTURINI: Rina Venturini on behalf of the
24 Calpine Corporation.

25 Calpine was an early supporter of AB 32, and we
26 also support Ms. Nichols' confirmation. Thank you.

27 CHAIRMAN PERATA: Thank you.

28 MS. McMAHON: Senator Perata, Members of the

1 Committee, Rachel McMahon with the Center for Energy Efficiency
2 and Renewable Technologies, here to express our strong support
3 for the appointment of both candidates to the Air Resources
4 Board.

5 Thank you.

6 CHAIRMAN PERATA: Thank you.

7 MR. MODISETTE: Chair Perata and Senators, Dave
8 Modisette. I'm the Director of the California Electric
9 Transportation Coalition. We're a business association of
10 California companies working on electric transportation
11 technologies.

12 Strongly urge confirmation.

13 CHAIRMAN PERATA: Thank you.

14 Anyone here in opposition?

15 DR. ENSTROM: This is actually in the area of
16 concern, not opposition.

17 My name is James Enstrom. I've been on the
18 faculty at U.C.L.A. for over 30 years, a native of Los Angeles,
19 actually born in Senator Cedillo's district.

20 The reason I'm concerned is two areas. I believe
21 that the Board is basing a lot of its decisions regarding the
22 dangers of air pollution on national studies, not the
23 California-specific studies. And I believe there are enough
24 California-specific data available that it should be used and
25 given preference over nationwide data.

26 In fact, I distributed -- I don't know if you
27 have the maps -- the maps indicate -- and this is from a major
28 study done by the Health Effects Institute in Boston in 2000,

1 that actually the effects of particulate, fine particulates, are
2 greater in the east than they are in California.

3 It's too much time to go into this in detail, but
4 one point is that I believe there should be a fair evaluation of
5 all the California data. I don't believe my own data has been
6 fairly evaluated. I've been an epidemiologist at U.C.L.A. for
7 doing this kind of health-related research for 35 years. And I
8 think that because of the stakes involved, because of the
9 billion dollars for the goods movement emission reduction plan,
10 that we need to be precise in this.

11 The second point regards appointments to the
12 Scientific Review Panel on Toxic Air Contaminants. And I
13 believe from my discussions with President Dynes of the
14 University of California that this process is not following the
15 Health and Safety Code, which indicates that there's supposed to
16 be replacement after three years. Some of the members on this
17 panel have served for over 20 years. And I think that's fine.
18 I mean, they're doing a good service, but I think they're
19 locking out other scientists.

20 For instance, I have a book here written by a
21 professor at U.C. Irvine, Robert Phalon, who's been conducting
22 an air pollution lab at U.C. Irvine for over 30 years. So,
23 scientists like him -- and this is on a controversy about the
24 fine particulates. So, the data is not as solid as some people
25 would like to portray it.

26 So, my recommendation is that if Chair Nichols
27 would look into these two issues and evaluate my concerns, I
28 would be favorable. So, I'd hope she would agree to do that.

1 Thank you very much.

2 CHAIRMAN PERATA: Thank you.

3 MS. NICHOLS: I would be happy to respond to
4 Professor Enstrom's concerns.

5 I do want to call to the attention of the
6 committee a letter from the head of the Scientific Review Panel,
7 John Froyne, who's the head also -- another U.C.L.A. colleague,
8 as am I, by the way, in which he, I think, attempts to respond
9 to these issues. It's a rather lengthy and technical letter, so
10 I certainly won't try to quote from it.

11 But this is a controversial area, and it deserves
12 to be responded to. So, we will follow up.

13 CHAIRMAN PERATA: Thank you.

14 Doctor?

15 DR. BALMES: I agree that there should be a
16 response.

17 CHAIRMAN PERATA: You have a future in politics.

18 [Laughter.]

19 CHAIRMAN PERATA: Well, I want to just conclude
20 by thanking you both. I don't know that there's any more
21 important position to be in, both of you, Mary for a long time.

22 And I wish you as long a career in doing this as
23 Mary. She hasn't lost her enthusiasm over the three governors
24 all those miles.

25 MS. NICHOLS: That's a lot of miles.

26 CHAIRMAN PERATA: I just want to remind you,
27 because the previous chair got, I guess, a little sideways with
28 the administration, and he's not sitting here any longer. And I

1 admired the fact that somebody did what they thought was
2 necessary, regardless of the consequences.

3 I really think you need to have that same kind of
4 independence. I've certainly watched your career, and I don't
5 doubt, Doctor, that you will follow in the same foot steps.

6 But there are many of us who, if you do things
7 like that, will be very supportive and would be there by your
8 side to make sure that you're not standing alone.

9 MS. NICHOLS: Thank you.

10 CHAIRMAN PERATA: I wish you very well in the
11 future work that you do.

12 With that, we have a motion to approve?

13 SENATOR PADILLA: Move.

14 CHAIRMAN PERATA: Call the roll, please.

15 SECRETARY WEBB: Cedillo.

16 SENATOR CEDILLO: Aye.

17 SECRETARY WEBB: Cedillo Aye. Dutton.

18 SENATOR DUTTON: No.

19 SECRETARY WEBB: Dutton No. Padilla.

20 SENATOR PADILLA: Aye.

21 SECRETARY WEBB: Padilla Aye. Perata.

22 CHAIRMAN PERATA: Aye.

23 SECRETARY WEBB: Perata Aye. Three to one.

24 CHAIRMAN PERATA: Three to one, congratulations
25 to both of you.

26 Dr. Lyou, you've been very patient. Why don't
27 you open for us, if you would.

28 DR. LYOU: I'd be happy to do so, thank you.

1 My name is Dr. Joseph Lyou, and good afternoon,
2 Chairman Perata and Members of the Rules Committee. Thank you
3 for considering my appointment to the governing board of the
4 South Coast Air Quality Management District.

5 I'll do my best to limit my comments to a brief
6 conversation about my experience and goals.

7 I'm a native Angelino, and with the exception for
8 a few years of graduate school at UC Santa Cruz, have lived my
9 entire life in the South Coast Air Quality Management District,
10 South Coast Air Basin.

11 I've spent my entire professional career, the
12 past 18 years, working for nonprofit organizations dedicated to
13 cleaning up the environment and protecting public health. I
14 divide my time fairly evenly between working on environmental
15 policy issues and providing technical assistance to people and
16 community-based organizations confronting our most serious
17 pollution problems.

18 Preparing for this hearing has given me the
19 opportunity to reflect upon my personal history and the myriad
20 of issues, both air quality and otherwise, that I have worked on
21 over the years. I have four-year-old twins and a two-year-old
22 daughter, so I don't normally have a whole lot of time to think
23 about these things. However, I found that there's nothing like
24 an upcoming confirmation hearing to get you to think about who
25 you are and why you do what you do.

26 I have lost two friends to asthma. One was a
27 14-year-old named Willie Estay, and he was the closest thing I
28 ever had to a younger brother. The other was Emily Hoffman.

1 She was -- died of asthma at the age of 30, was a mother, left
2 behind a young daughter and a husband.

3 Willie died in 1983, and I've been thinking about
4 him a lot recently. My son has asthma, and he reminds me of
5 Willie. Their personalities were very similar. Willie had a
6 twin sister, just like my son.

7 And I remember being in the hospital at 2:00 a.m.
8 the night before the doctors removed Willie from life support.
9 And I spent that night with Willie and his father. And I
10 remember very clearly the devastation that his father
11 experienced to losing his only son.

12 And I look back at that experience very
13 differently now that I'm a father. And I think about that night
14 when I think about my son's asthma. And it reminds me why it's
15 so important to be a governing board member on the South Coast
16 Air Quality Management District.

17 After graduating with my doctoral degree from UC
18 Santa Cruz in social psychology, I began working for the
19 nonprofit organization, Committee to Bridge the Gap. I spent 10
20 years there.

21 I was introduced to environmental justice issues
22 when I became involved in a fight to stop a radioactive waste
23 facility from going in on sacred Native American lands in Ward
24 Valley, California, just outside of Needles. I also spent time
25 learning about site remediation, health studies, and air quality
26 issues while helping community members confronting contamination
27 issues at the Rocketdyne Santa Susana Field Laboratory near Simi
28 Valley.

1 After leaving Committee to Bridge the Gap in
2 2000, I spent the next three years working with the California
3 League of Conservation Voters Education Fund. In that job, I
4 began to focus exclusively on environmental justice and air
5 quality issues. I worked with community members and AQMD staff
6 on a variety of policy initiatives, including the agency's
7 annual environmental justice work plans, the school bus fleet
8 rules, their land use guidance document, and their cumulative
9 impacts reduction strategy. I also joined AQMD Executive
10 Officer, Barry Wallerstein, as a member of the ARB Environmental
11 Justice Stakeholders Group, and we served together for several
12 years on the Cal EPA Advisory Committee on Environmental
13 Justice.

14 In 2003, I founded the California Environmental
15 Rights Alliance, a public interest organization dedicated to
16 achieving environmental justice and improving community health
17 in California. I continued to serve on the Cal EPA Advisory
18 Committee on Environmental Justice and eventually became
19 co-chair of that group.

20 I am proud to have played a major role in the
21 negotiating and writing of that advisory group's Environmental
22 Justice Recommendations Report. During the development of that
23 report, we came very close to reaching consensus among a very
24 diverse group of stakeholders, and although we disagreed about
25 issues of cumulative impacts and precaution, we agreed upon more
26 than 100 recommendations. And that effort resulted in an
27 important work product and ingrained in me the belief you can
28 get to "yes" if you get beyond the rhetoric, think creatively,

1 and focus on the real needs and concerns of the people involved.

2 My main goal as a member of the South Coast AQMD
3 Governing Board is to protect public health, especially in those
4 communities hardest hit by air pollution. I have spent the last
5 -- past 11 months on the governing board trying to do just
6 that.

7 I have other goals, too. I'd like to see the
8 agency develop a viable cumulative environmental impacts policy.
9 I want the public to have the benefit of a more formal complaint
10 resolution protocol. And I am committed to making sure that we
11 reach attainment of the federal PM 2.5 ozone and standards as
12 quickly as possible.

13 So now is when I have to tell you about my all
14 time favorite fortune cookie. It said, "You never hesitate to
15 take on the most difficult tasks."

16 And I recognize the challenges we face. There's
17 not a whole lot of low-hanging fruit left anymore, but I welcome
18 this challenge. I couldn't have spent the past 18 years doing
19 what I've done without a can-do and must-do attitude. And I
20 remain hopeful that I have -- and I have an appreciation for how
21 hard this work will be.

22 I like to think that I bring to the governing
23 board the dedication and sense of urgency needed to make sure
24 that we achieve these goals.

25 To wrap up, I wanted to let you know that they've
26 adopted an environmental awareness program at my twins'
27 preschool. And recently my son woke up and started chanting,
28 "Reduce! Reuse! Recycle!" He was very loud and persistent,

1 like only a four-year-old can be. And I looked at him and I
2 said, "Some day I'll explain to you what I do for a living."

3 I don't think he heard me. He just kept
4 shouting, "Reduce! Reuse! Recycle!" I mean, almost literally
5 bouncing off the walls. And soon his twin sister joined in the
6 fun.

7 And I thought to myself, you know, they might be
8 four years old, but they've really got it all figured out. And
9 I committed to trying to bring their sense of clarity and
10 purpose to my work as a South Coast AQMD Governing Board member.

11 Thank you for considering my appointment.

12 CHAIRMAN PERATA: Thank you.

13 I looked at your resume, and I felt compelled to
14 ask you how you "feel" about the Air Quality Board, but I'm not
15 going to.

16 DR. LYOU: I have a long record of how I feel
17 about the Air Quality Board, having been to the other side of
18 the podium for many, many years.

19 CHAIRMAN PERATA: It's good to have you on side
20 that you're to right now. Having spent the time from looking
21 up, it's probably well-served time.

22 I don't know anything about Los Angeles.

23 SENATOR PADILLA: I hear nothing but good things.

24 We haven't had a chance to work extremely closely
25 together, but just for the purpose of a little bit of discussion
26 here before we vote, the Legislature's being asked this year to
27 consider moving the sunset on the one-dollar-per-vehicle.

28 DR. LYOU: I hear they have a very good author

1 too.

2 SENATOR PADILLA: So, what kind of programs do
3 those funds go towards?

4 DR. LYOU: That program goes to the Clean Fuels
5 Fund, and it's for the development of fuels that reduce air
6 pollution within the district.

7 And I think that through our Air Toxics
8 Monitoring and Modeling Study Matrix we found that air toxics
9 risk within the district has actually been reduced.

10 And I asked our Executive Officer, where'd that
11 come from? How did we do that? And he attributed it mostly to
12 the clean fuels progress.

13 SENATOR PADILLA: Does it fund technologies?
14 Does it fund equipment? Does it fund research?

15 DR. LYOU: I think it's research and technology.

16 SENATOR PADILLA: And infrastructure.

17 Move approval.

18 CHAIRMAN PERATA: Anyone here who'd like to speak
19 in favor of this gentleman?

20 MR. MAGAVERN: Good afternoon. Bill Magavern
21 with Sierra Club California.

22 It's a great pleasure for me to support the
23 confirmation of Joe Lyou to the South Coast Air Quality
24 Management District's Governing Board.

25 I've known Dr. Lyou since the early '90s, when we
26 were fighting the Ward Valley radioactive waste plant. And I
27 think that the fact that the Governor would appoint an
28 environmental justice advocate to the board that oversees the

1 air quality in the most polluted air basin in the country
2 actually says a lot about the Governor's willingness to not only
3 tolerate but to eagerly seek out a diversity of opinion in his
4 appointees.

5 And I'm sure that Dr. Lyou's performance will
6 more than vindicate the confidence that the Governor and, I
7 hope, you will place in him. I know that he takes his role in
8 protecting public health and also in involving public
9 participation very seriously.

10 I know that Joe Lyou is the kind of person who
11 will -- will read carefully every document that it is his role
12 to read, and will be able to articulate the needs of the people
13 in the district.

14 He has strong opinions, but he also is very
15 willing to listen to the opinions of other people. And I think
16 I saw that most during the consideration of the Cal EPA
17 Environmental Justice Advisory Committee's recommendations. And
18 that's one of the reasons why Dr. Lyou has earned the respect of
19 people from across the spectrum when it comes to considering
20 environmental justice and environmental health issues.

21 So, I strongly urge his confirmation today.

22 CHAIRMAN PERATA: And we will treat this now as
23 the valedictorian speech, so you can all just come in.

24 [Laughter.]

25 SENATOR CEDILLO: May I put my vote in before I
26 have to leave?

27 CHAIRMAN PERATA: Yes, go ahead and open the
28 roll.

1 SECRETARY WEBB: Cedillo.

2 SENATOR CEDILLO: Aye.

3 SECRETARY WEBB: Cedillo Aye.

4 MR. CARMICHAEL: Tim Carmichael, Coalition for
5 Clean Air in strong support of Dr. Lyou's confirmation. Thank
6 you.

7 CHAIRMAN PERATA: Thank you.

8 MS. NOTTHOFF: Ann Notthoff with the Natural
9 Resources Defense Council and California League of Conservation
10 Voters, in strong support.

11 CHAIRMAN PERATA: You got a two-fer there.

12 MS. HOLMES-GEN: Bonnie Holmes-Gen. And the
13 American Lung Association of California also supports Dr. Lyou.

14 MR. KALB: Dan Kalb, Union of Concerned
15 Scientists. We're thrilled to strongly support Dr. Lyou for
16 this nomination.

17 MS. McMAHON: Rachel McMahon with CEERT, also in
18 strong support.

19 CHAIRMAN PERATA: Anyone here in opposition?
20 Seeing none, we have a motion to approve. Call
21 the roll, please.

22 SECRETARY WEBB: Dutton.

23 SENATOR DUTTON: Aye.

24 SECRETARY WEBB: Dutton Aye. Padilla.

25 SENATOR PADILLA: Aye.

26 SECRETARY WEBB: Padilla Aye. Perata.

27 CHAIRMAN PERATA: Aye.

28 SECRETARY WEBB: Perata Aye. Four to zero.

1 CHAIRMAN PERATA: Congratulations.

2 DR. LYOU: Thank you.

3 [Thereupon this portion of the
4 Senate Rules Committee hearing
5 was terminated at approximately
6 3:35 P.M.]

7 --ooOoo--

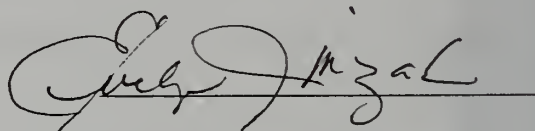
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of June, 2008.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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CHAPTER 1

The first chapter of the book is devoted to the study of the properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt.$$

It is shown that the function $f(x)$ is continuous and differentiable on the interval $(-\infty, \infty)$.

The second chapter of the book is devoted to the study of the properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt.$$

It is shown that the function $f(x)$ is continuous and differentiable on the interval $(-\infty, \infty)$.

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

April 23, 2008

Mellonie S. Yang, Chief
Professional Fiduciaries Bureau
Post Office Box 989005
West Sacramento, CA 95798-0005

Dear Ms. Yang:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as Chief of the Professional Fiduciaries Bureau on Wednesday, June 4, 2008. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by May 15, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 15th.

Statement of Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as the PFB chief? How will you measure your success?*
2. *As the first chief of a new bureau, how are you assisting the board to define its priorities?*
3. *What training has Department of Consumer Affairs provided to you and your board? What role do you play in helping them understand open meeting and conflict of interest rules?*

Implementation

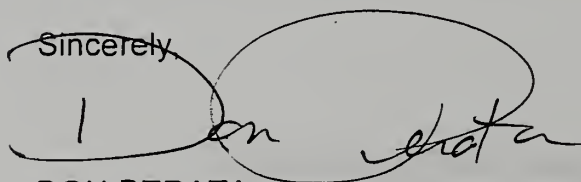
PFB was established in 2006 to license and regulate professional fiduciaries. The bureau's duties include ensuring that minimum competency standards are met in terms of education and experience, conducting examinations, investigating violations of professional ethics and law, and disciplining licensees when appropriate.

4. *What type of public outreach is the bureau conducting to notify the general public and those who need to obtain a license about this new program for professional fiduciaries?*
5. *Last year the licensing deadline was extended by six months to January 1, 2009. What is the status of the new licensing program?*
6. *One of the primary purposes of the bureau is to protect the state's most vulnerable population from fraud and abuse. Please describe the bureau's plan regarding its enforcement program.*
7. *The bureau is scheduled to sunset in 2011 unless otherwise extended. Does PFB have benchmarks set prior to the sunset date to measure how the program is progressing? If so, please describe them.*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

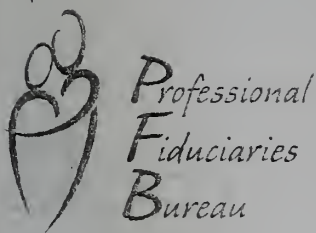
Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata", is written over a large, loopy circular mark.

DON PERATA

DP:JR



P.O. Box 989007
West Sacramento, CA 95798-9007
Phone (916) 574-7340 FAX (916) 574-8645
www.fiduciary.ca.gov

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STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

May 15, 2008

Don Perata, Chair
Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814-4900

Dear Mr. Perata:

Senate Rules Committee

**SENATE RULES CONFIRMATION HEARING
PROFESSIONAL FIDUCIARIES BUREAU
June 4, 2008, 1:30 Hearing**

MAY 15 2008

Appointments

1. GOALS

As Chief of the Professional Fiduciaries Bureau (Bureau), my goal will be to ensure quality services for consumers and to increase awareness of the profession. By doing so, more people will be attracted into the field; properly educated, and available for the growing senior population. This will increase consumer protection and services available to meet the anticipated increase of marketplace demands.

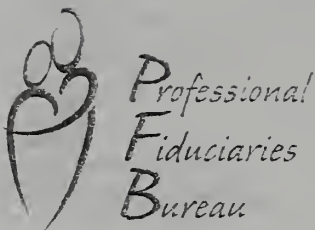
My success will be measured by the Bureau's enforcement program, including amount and types of consumer complaints, their resolutions, and by the increased number of licensees.

2. PRIORITIES

The Bureau became effective January 1, 2007. Based upon the statutory deadlines, and the existing regulation at the state and court levels that sunset June 30, 2008, the Bureau will be issuing its first licenses on July 1, 2008.

As the first Chief of the Bureau, I've established priorities based upon what needs to be accomplished for implementation, outreach to candidates, enforcement, consumer education, and growth.

My first priority has been to implement a comprehensive and stable program in time to enable the Bureau to issue licenses beginning July 1, 2008. This will provide private fiduciaries seeking new court appointments on or after July 1, but before the mandatory licensure deadline of January 1, 2009, to comply with the licensing mandates. Early implementation of the licensing program allows a pool of fiduciaries to be available for court appointments during this timeframe for consumers.



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To implement the program, I began by identifying and convening a work group of professionals to advise on drafting licensing regulations. The working-group represented a cross-section of the industry and included judges, court investigators, probate court managers, public guardians, private fiduciaries, senior advocates, California State Fullerton's representatives, geriatric care managers, and probate attorneys. With these efforts, the Bureau passed emergency regulations last year to begin operation.

The Bureau has also engaged in extensive outreach to identify and educate licensing candidates, including offering application packages since January 2008, and the examination since February 2008 to approved candidates. The Bureau's licensing unit will issue licenses no later than July 1, 2008.

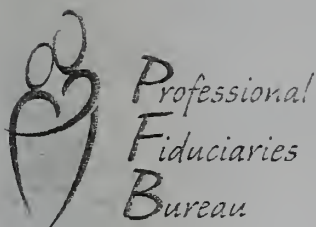
My priorities also include enforcement, and the development of an outreach plan to inform and educate consumers and to recruit licensees.

3. ADVISORY COMMITTEE TRAINING

To prepare for my position, I've been working closely with the Department's legal office in training on all the open meeting and conflict of interest rules. Once the Advisory Committee is established, the Department will require all new members to attend an orientation and training program that will cover open meeting and conflict of interest laws. With legal counsel, I will be working closely with the advisory members to assist them in any way possible to understand the rules and to adhere to them.

4. PUBLIC OUTREACH

The Bureau has engaged in public outreach since last year. I have not only attended the DCA Senior Advisory Group meetings but I've also been engaged in networking with individuals and organizations such as AARP, the Professional Fiduciary Association of California, California Judicial Council, the Geriatric Care Managers, and others since last year. I launched the Bureau's website mid-year 2007 with consumer information and Bureau contact information. The DCA consumer call center receives calls from the public and directs them to the Bureau. With the program being so small the DCA outreach unit assists by speaking about the program at all relevant public events. I developed a consumer brochure, which is handed out at events, and I'm working on developing a specific outreach plan to reach the targeted consumer population at certain events and locations such as community fairs and nursing homes.



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5. STATUS OF PROGRAM

When the licensing deadline of the program was extended last year to January 1, 2009, it had little impact on the Bureau. The Bureau still had to prepare to issue licenses by July 1, 2008 to private fiduciaries who wanted to receive new court appointments before January 1, 2009. All of the processes and programs had to be developed, like the examination, regardless of the number of licensees. The only impact the extension of the deadline will have is to spread applications and processing for the Bureau over a year's period rather than over six months.

6. ENFORCEMENT PROGRAM

The Bureau is in the process of developing an enforcement program. The first phase of enforcement is license denial, followed by discipline once there are licensees. In planning the program, I was able to justify emergency regulations, the law and standard for license denials. License denial is an enforcement tool for the Bureau to deny ineligible applicants or applicants whose fiduciary or criminal history justifies denial.

Complaints can be filed: with the call center, on the website; and via phone calls or the Bureau's public email account. Since the Bureau has already received complaints against applicants, I'm working with the legal office to process them.

I've developed a draft comprehensive complaint form and instructions tailored to the specific consumer populations, in large font, that includes important resource and referral information to assist consumers in filing complaints.

For each complaint received against a licensee (or applicant), or upon the Bureau's own initiation, the Bureau will open up an investigation. The enforcement program will also conduct regular audits of licensees to determine and compel compliance.

In addition to conducting investigations, the Bureau will be referring consumers to other appropriate state and local agencies to file complaints. For example, if there is suspected elder abuse, the consumer is directed to contact the elder abuse unit at the attorney general's office and local law enforcement. If suspected abuse occurred in a long-term care facility the Bureau will ask the consumer to contact their local ombudsman program. For complaints that fall outside the Bureau's jurisdiction, consumers will be directed to contact the appropriate agency. As importantly, if a complaint is filed against an attorney or a CPA, the Bureau will inform the consumer that it is non-jurisdictional and provide them with appropriate referral information, and, forward their complaint to the agency.

To further assist consumers, I will begin doing outreach to find advocates or professional volunteers whom can assist seniors and other vulnerable consumers fill out and file the Bureau's complaint forms and establish a way to make them available to seniors.



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Additionally, I've been working with other state and local enforcement agencies to assist in the coordination of complaints and investigations, including the district attorneys, the attorney general's office, and the courts, including court investigators, so as to appropriately direct consumer complaints and to encourage open communications with other agencies. It is important for all involved agencies to cooperate and coordinate with each other on investigations so as to not compromise any agency's investigation to address problems and protect the consumer.

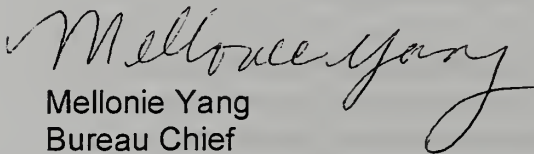
For the next stage of enforcement, upon licensees, I've drafted enforcement regulations outlining the Bureau's disciplinary guidelines, and the criteria for issuing citations and fines that I will be submitting to the Office of Administrative Law shortly.

I will also be tracking unlicensed activity and taking appropriate action.

7. BENCHMARKS

To measure the program's progress, the Bureau will be measuring processing times for applications, complaints, investigations, and statistics for the examination. It will be tracking the number of applications, and it will be tracking the numbers and types of complaints, and their resolutions, whether disciplinary or not, and any resolution. The Bureau will also be tracking information on complaints that are outside the jurisdiction of the Bureau. Finally, the Bureau will be gathering statistics on examination candidates, including percentages of pass and fail, and examination attempts.

Sincerely,


Mellonie Yang
Bureau Chief



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April 17, 2008

Nettie Sabelhaus
Rules Appointments Director
Room 420, State Capitol
Sacramento, CA 95814

Senate Rules Committee

APR 17 2008

Dear Ms. Sabelhaus:

Appointment

Below are my responses to the questions sent to me on April 3, 2008. I appreciate the opportunity to introduce myself and respond to the committee's questions.

Background

1. What are your goals and objectives as a member of the Air Resources Board (ARB)? What specific policies do you promote to maintain the board's tradition as a leader and pacesetter in clean air policy?

My primary goal as a board member is to protect the health of all Californians by striving to maintain the quality of the air we breathe and to slow climate change. While our state has long been at the forefront of clean air policy, this was born of necessity because we have some of the worst air pollution in the country. We have large urban populations living in mountain-bordered basins that are dependent on automobile transportation and a warm, sunny climate; these factors lead to high levels of photochemical air pollution. In addition, our vibrant economy relies on surface goods movement that involves heavy diesel pollution near ports, rail yards, and trucking distribution centers as well as along major transportation corridors. Our newest air pollution challenge is that of greenhouse gas emissions. Because of its warm climate, California is particularly vulnerable to the effects of heat waves on the health of our people and agriculture. Climate change also will add to our air quality problems because hotter weather will lead to greater ozone formation.

To maintain California's air quality, I see several key areas where the ARB needs to develop effective policies. First, because the

threat to both public health and environmental quality of climate change is so great, we must move quickly to control greenhouse gas emissions. Second, the air quality in the San Joaquin Valley must be improved. The continued development and population growth of the Valley has meant more motor vehicles and more miles driven in geographic conditions that not only trap locally sourced pollution, but capture pollution from other regions as well. The Valley now has the worst air quality in California, along with the highest asthma rates. Third, pollution related to surface goods movement must also be better controlled, especially given that more vulnerable populations tend to live near the transportation centers and corridors where goods are moved and much of the goods are moved through the Valley. Finally, in the development of all policies by ARB, issues of environmental justice must be considered.

2. Do you believe there are specific issues on which it is most important for you to take the lead as the physician appointment to the board?

As the physician appointed to the board, I consider it my responsibility to review all proposed ARB policies with regard to their impact on public health. That said, I expect to take a lead role in consideration of ambient air quality standards for "criteria" pollutants like ozone, particulate matter, nitrogen dioxide, and carbon monoxide that are designed to protect the health of all Californians, including those with increased susceptibility such as children, people with pre-existing heart or lung disease, and the elderly. These air quality standards are supposed to be based on the state of scientific knowledge about the health effects of the pollutant and to have a sufficient margin of safety to protect the most susceptible populations.

Another area in which I would expect to take a lead role is toxic air contaminants, such as benzene, diesel exhaust particles, hexavalent chromium, and perchlorethylene. The identification of toxic air contaminants is again based on review of the state of the scientific knowledge about the health effects of the chemical, although the control strategies to reduce emissions are different than for criteria pollutants. I believe that my experience as both a physician and air pollution health effects scientist will help me weigh the evidence for a new air quality standard for a criteria pollutant or the identification of a new toxic air contaminant.

A third area in which I would expect to lead is environmental justice. State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. A major focus of environmental justice is on health of impacted communities. I am committed to the concept that members of such communities should have the best possible information about the air they breathe and a voice about what is being done to reduce unhealthful air pollution in their communities.

3. How do you view your role as one of the state's chief air regulators and as a pleasure appointment of the Governor's. Do you believe that you have sufficient

independence to act in the public interest without undue interference from your appointing authority?

I take the responsibility of being a member of the ARB very seriously. As a physician, I am committed to improving public health and as a scientist I am committed to assessing an issue based on actual data. Thus, in my role as member of the board, I plan to make decisions that are health-protective and supported by the scientific knowledge base, rather than on what might be politically expedient. I would not have accepted the appointment of the Governor if I had felt that I would not be able to make independent decisions in the public interest.

Attainment of State and Federal Air Standards

4. The Governor's 2003 Environmental Action Plan committed his administration to reduce air pollution emissions by 50 percent by 2010. Is the Administration on track to meet this goal? If not, where does it stand? What specific measures is the board taking to meet the Governor's goal? Please specify the emission reductions from each measure.

The Administration has focused on the actions necessary to address the most significant air quality issues facing California. In 2007 ARB adopted a new State Strategy that doubles the rate of key emission reductions (oxides of nitrogen) over the next few years. The 2007 State Strategy incorporates the Goods Movement Plan and Diesel Risk Reduction Plan strategies and provides key emission reductions needed in State Implementation Plans (SIPs) for nonattainment areas. ARB is also implementing the Proposition 1B air quality bond program with the goal of achieving the maximum public health benefit. Together, these priorities represent the most significant actions needed to reduce the public health impacts of air pollution in California.

5. What is the status of the State's compliance with the State Implementation Plan (SIP)? What additional measures need to be taken to achieve attainment of the federal air standards pursuant to the SIP?

Urban areas of the State considered nonattainment of the federal 8-hour ozone standard include: the South Coast and San Joaquin Valley, San Francisco Bay Area, Sacramento, and San Diego. Of these, the Bay Area now meets the standard. In addition, multiple rural areas located downwind of the major urban areas are also nonattainment of the federal 8-hour ozone standard. These include: Antelope Valley and Western Mojave Desert, Coachella Valley, Ventura County, Eastern Kern County, Butte County and the Sutter Buttes, Western Nevada County and the Mountain Counties, and Imperial County.

California has two nonattainment areas for the federal PM_{2.5} standard: the South Coast and San Joaquin Valley. These areas are also considered nonattainment for the federal PM₁₀ standard, although PM₁₀ levels in the San Joaquin Valley now meet the

standard. In addition, Owens Lake and Imperial County are also nonattainment for the federal PM10 standard. Imperial is currently developing a new PM10 attainment plan.

In 2007, ARB submitted an updated State Strategy and 8-hour ozone SIPs for the South Coast, Coachella Valley, the San Joaquin Valley and San Diego to U.S. EPA, together with the South Coast's PM2.5 SIP. The San Joaquin Valley has also developed a PM2.5 SIP which will be considered by the local Board on April 30.

Later this year, local boards will consider adopting 8-hour ozone SIPs for Antelope Valley and Western Mojave Desert, Ventura County, Sacramento, and Imperial County. SIPs for many of the rural areas (such as the Mountain Counties) are not yet due to U.S. EPA. Planning requirements for these areas, including the SIP submittal deadline, are pending due to litigation over U.S. EPA's 8-hour ozone implementation rule.

Each nonattainment area's SIP outlines a combination of existing air quality program elements and new measures needed in that region to attain the federal air quality standards. The new measures are described in the 2007 State Strategy, approved by the Board last September. For two areas – the South Coast and San Joaquin Valley – the SIPs include a commitment to develop long term measures, which will provide the final increment of emission reductions needed to meet the federal 8-hour ozone standard.

6. Under the California Clean Air Act of 1988, the State board and the local air districts are charged with achieving and maintaining State ambient air standards along with the federal standards. What parts of the State have not achieved those standards and what actions is the ARB taking to meet the State act requirements?

Virtually all of California is nonattainment for the State ozone and particulate matter air quality standards. In the case of ozone, only Alpine, Del Norte, Humboldt, Lake, Lassen, Mendocino, Modoc, Plumas, Sierra, and Trinity Counties are in attainment of both the State 1-hour and 8-hour ozone standards. For the State PM10 and PM2.5 standards, only Amador, Lake, Mariposa, Siskiyou, Sonoma, and Tuolumne Counties attain both.

The 2007 State Strategy will provide significant progress towards attaining the State's ambient air quality standards throughout California. In addition to the measures in the 2007 State Strategy, the Board works to ensure that the regional air quality districts adopt the most effective feasible emission control measures for stationary and area-wide sources.

Air Quality/International Goods Movement

According to data collected by your agency and the Business, Transportation, and Housing Agency, there are hundreds of additional deaths per year from goods movement-related air pollution, and the mortality rate is increasing. In

addition, there are thousands of increased incidences of respiratory illnesses and other adverse health effects. At the same time, goods movement provides jobs and increased economic benefits to the state.

7. What actions do you support to address the health effects of air pollution from the movement of goods, especially in low-income neighborhoods adjacent to ports like West Oakland, San Pedro, and Wilmington?

California communities along the trade corridors bear the brunt of the impacts from the growing freight industry to satisfy U.S. demands for goods. Diesel pollution and its serious health consequences, traffic and noise around freight facilities, and choked roads across our urban areas are making life increasingly difficult for residents.

The seriousness of the problem demands an aggressive, comprehensive solution. Government at international, national, state and local levels must push the limits of technology with regulatory strategies and incentive funds. The entire freight industry and all of its customers must make unprecedented investments in cleaner technology and fuels, and build "green" into all of their operations for greater efficiency. Environmental and community advocates need to continue pressing all of us for quick, effective action.

ARB continues to pursue multiple avenues to address the community impacts of air pollution from freight movement. Staff has completed extensive health risk assessments for California's three largest seaports and 16 major rail yards that emphasize the high health risks in nearby communities. These results inform ARB's decisions on rulemakings, help us set priorities for incentive funding, and give us a tool to gauge the effectiveness of our actions to reduce localized health risk.

ARB must continue to aggressively pursue regulatory strategies and implement incentives to fulfill the goals of the 2006 Emission Reduction Plan for Ports and Goods Movement and California's State Implementation Plans for the South Coast and San Joaquin Valley. The Board's existing programs and recently adopted rules for drayage trucks, ship fuels and ships at dock, harbor craft, and cargo equipment will reduce diesel PM emissions from freight operations in half between 2005 and 2020, despite significant cargo growth. To meet our goals at the local, regional, and statewide levels, we must proceed with adoption of the major upcoming rules on the Board's 2008 agenda for diesel trucks operating in California and ship main engine fuels.

The \$900 million a year in combined incentive funds pledged by the State, local air districts, and the Ports of Los Angeles and Long Beach for cleaner vehicles, equipment, and fuels in California are the third vital element to addressing community health risk from freight operations and other mobile pollution sources.

The slate of existing and upcoming regulations, together with available incentive funds, will put California solidly on track to achieve the Board's statewide goal to cut the freight-related health risk from diesel particulate matter by 85 percent by 2020 and help attain federal air quality standards in the nation's most severely polluted regions. I am committed to these objectives.

Under past leadership at the ARB, the board negotiated and entered into a voluntary Memorandum of Understanding (MOU) with the railroad industry to reduce emissions from rail activities associated with goods movement. This MOU, and the process by which it was entered into, has been strongly criticized by air districts and environmental groups who feel that the ARB could be doing more to reduce diesel emissions from rail.

8. Please describe your views on the Rail MOU. Was the process by which it was entered into deficient from the public standpoint? Should the board re-negotiate the MOU, or scrap it altogether?

As you know, I was not part of the Board when the ARB railroad Agreement was signed in June 2005. As some of you may remember, in response to significant public criticism, the ARB Board approved Resolution 05-40 in July of 2005 which requires that future MOUs have greater public participation and be subject to Board approval at a public hearing. I would ensure that the spirit and provisions of ARB Resolution 05-40 would be fully met should we consider any future railroad MOUs.

As to my views on the 2005 ARB/Railroad Agreement, I do know that this MOU has provided California with a 20 percent reduction in diesel exhaust and other pollutants within the past three years. To accomplish this, UP and BNSF: 1) retrofitted nearly all of their over 400 intrastate locomotives with idle reduction devices, 2) exceeded the requirements for the use of CARB and ultra low sulfur diesel fuels, and 3) have continued to meet the smoking locomotive compliance rate of 99 percent. The ARB and railroads have also prepared health risk assessments for 16 major rail yards and have begun the process to identify additional risk mitigation options at each of these yards. All of the major provisions of the 2005 Agreement are nearly fully implemented. Therefore, I do not think it would be in the public's best interest to renegotiate or scrap the 2005 railroad Agreement.

U.S. EPA recently released the final locomotive rulemaking and it should provide some emission benefits from the new Tier 4 locomotives and the provisions for remanufactured existing locomotives. However, due to the potential future growth from goods movement, there could be a significant shortfall in both NOx and PM emission reductions in California. With the Clean Air Act explicit about federal authority to regulate locomotive emissions, California may need to rely on future railroad Agreements in order to make progress in meeting air quality goals.

Climate Change/Greenhouse Gas Emissions Reductions

The Governor has made reducing greenhouse gas pollution a cornerstone of his administration's environmental policies. He has stated that urgent and immediate action is needed to address climate change.

The Global Warming Solutions Act of 2006 (commonly referred to as AB 32), which requires the board to establish an overall state limit on greenhouse gas

(GHG) pollution, and to adopt all technologically feasible and cost-effective pollution reductions to achieve that limit. The law authorizes the board to adopt “market-based compliance mechanisms” like a cap and trade system only after extensive process and policy actions have been taken by the board.

The Governor also has issued a series of executive orders establishing a Climate Action Team in state government to reduce GHG pollution from state agency activities, setting a 2050 limit on pollution, establishing various advisory committees and duties.

It is widely assumed that meeting the objectives of AB 32, and the longer term targets articulated by the Governor in executive orders, will require a fundamental transformation in the California economy from a fossil-fuel based economy to a new energy economy.

9. Please describe the actions the board has taken to date to implement the law and the Governor’s executive orders and those actions that will be taken in 2008 to implement the law.

Since the Legislature passed and the Governor signed AB 32 seventeen months ago, ARB has worked diligently to meet the goals of the bill on an accelerated timeframe. ARB is on track and on time in meeting all requirements of the bill. In 2007, the Board accomplished the following specific requirements of AB 32:

- Developed and adopted mandatory emission reporting requirements for the 800 largest stationary sources of GHG emissions (Health and Safety Code, Section 38530).
- Refined California’s statewide greenhouse gas inventory and adopted the 1990 GHG emissions baseline that defines the 2020 target (H&SC §38550).
- Published a list of Early Action measures, including nine Discrete Early Actions for which ARB will adopt regulations to be enforceable by January 1, 2010 (H&SC §38560.5(a)).
- Adopted port electrification regulation (one of the Discrete Early Action Measures) that will reduce toxics, ozone precursors, and GHGs, and initiated work on other early actions (H&SC §38560.5(b)).
- Adopted a forestry management protocol enabling the identification of real and verifiable tons of carbon dioxide that can be stored in California’s forests (H&SC §38571).
- Established the Environmental Justice Advisory Committee, with 10 members representing communities in all regions of the state (H&SC §38591(a)).
- Established the Economic and Technology Advancement Advisory Committee (ETAAC) with 20 members representing California’s diverse economy (H&SC § 38591(d)).
- Adopted a policy statement to encourage voluntary efforts to reduce GHG emissions prior to the full implementation of AB 32 (H&SC § 38562(b)(3)).

In addition to meeting these specific requirements, in 2007 ARB also worked with the Climate Action Team to establish and support multi-agency technical subgroups that are developing and assessing reduction measures across all sectors; held two Scoping Plan workshops, focusing on Plan structure and overviews of possible reduction opportunities in each sector; developed a web site, list serves and comprehensive online calendar for announcement of AB 32 related activities and events; solicited, reviewed and published public comments and ideas for GHG reduction measures; and staffed up with more than 108 new hires focused on AB 32 implementation. These staff, which include transfers of existing ARB employees, staff from other state agencies, and staff new to state service, are distributed throughout the Board and represent a significantly increased capacity to implement climate programs in California.

This year, ARB will continue work on implementing several of the Discrete Early Action Measures, including the development of the Low Carbon Fuel Standard and implementation of measures to reduce emissions from auto refrigerants, landfill gas, truck efficiency, semiconductor PFCs, can propellants, tire inflation, and reduced sulfur hexafluoride (SF6). The Board will also commence GHG emissions tracking and get prepared for the reporting of emissions in 2009, with rigorous verification procedures.

One of the largest elements of AB 32 is the development of the Scoping Plan. ARB staff is currently developing the evaluation framework of the Scoping Plan to ensure that the recommendations in the Plan meet all statutory requirements in AB 32. This includes developing a suite of programs and measures to reduce GHGs throughout the California economy taking into account the unique abilities and needs of each sector; conducting economic analysis and technical workgroup meetings; receiving and reviewing preliminary assessments of potential measures, including estimates of GHG emissions reduction, cost, and potential environmental co-benefits and impacts on environmental justice communities and public health; preparing comprehensive economic analysis of possible policy approaches, including direct regulation, a cap and trade system, and a carbon fee; and performing noneconomic analysis of possible policy approaches, including environmental and localized public health and impacts as necessary (H&SC §38561(d) and H&SC §38570(b)).

In late June, staff will release a draft of the Scoping Plan, based on input from the public workshops, advisory groups, and the Climate Action Team. ARB will use the draft plan to frame public workshops over the summer and to prepare the Scoping Plan proposal for presentation to the Board at the end of the year (H&SC §38561(a)).

ARB has also undertaken various activities to complement the requirements of AB 32. These include the facilitation of the development of a "road map" for climate and energy related Research Development, Demonstration and Deployment (R&DDD) to coordinate R&DDD projects in California, and learning from international experts in all areas of interest, including economics, markets, clean technology deployment, health analysis, and specific industrial sectors.

Finally, ARB is demonstrating its strong commitment to a well-informed and transparent public process. This includes outreach to stakeholders through meetings, workshops,

and speaking engagements, and consultation with national and international governments and other experts. For example, ARB is planning a series of community meetings to enable broad-based comment on the draft Scoping Plan (H&SC §38561(g)), and conducting scores of stakeholder meetings within the different sectors examined through the Scoping Plan process (H&SC §38561(g)). Along with the UC Davis Institute of Transportation Studies, ARB is also co-hosting an April 2008 symposium on reducing vehicle GHG emissions from passenger vehicles (H&SC §38590).

10. Have any of those actions resulted in quantifiable and measurable reductions in GHG pollution? If so, how much GHG pollution has been reduced to date? How much pollution is expected to be reduced in the 2008-2010 period from measures adopted by the board pursuant to AB 32?

In general, measures adopted pursuant to AB 32 will not achieve reductions in the 2008-2010 timeframe. AB 32 recognized that time is needed to develop and implement regulatory measures, and therefore under the bill even the discrete early action measures—which will “jump start” our reduction efforts—are given until January, 2010 to take effect.

However, the Pavley GHG emissions vehicle standards (AB 1493) are expected to reduce climate change emissions by approximately 0.6 MMT in 2010, and 30 million metric tons in 2020 (representing 17-percent of the 2020 target). With the implementation of these standards delayed by lawsuits, and the outcome of our legal challenge to USEPA’s denial of our necessary waiver request still pending, actual GHG reductions will depend on the timing of actual program implementation. We are confident that we will prevail in obtaining our waiver and are vigorously pursuing our appeal.

The green ports measure adopted in 2007 was already being pursued for its criteria pollutant and toxics benefits and was also identified as an AB 32 discrete early action in recognition of its greenhouse gas benefits and while it does not produce substantial benefits prior to 2010, the measure is estimated to produce a 0.3 MMT reduction in 2015, and 0.5 MMT reduction in 2020.

In addition to the adopted measures, the Board approved a policy statement to encourage voluntary efforts to reduce GHG emissions. These voluntary efforts to decrease fuel and energy use and increase energy efficiency will reduce GHG emissions. ARB’s voluntary policy statement is intended to provide more regulatory certainty for those entities wishing to move forward with early GHG reductions.

11. According to various reports and presentations made by Administration agencies, transportation accounts for over 40% of the GHG pollution produced in the state. What actions do you support to reduce GHG pollution from transportation sources?

It is critical that the transportation sector achieve its fair share of the emission reductions needed to meet the State's 2020 goal, because of its large size. This reduction in GHG emissions can be achieved through the use of currently available and emerging technologies. GHG reductions will come from three overarching strategies: more efficient vehicles, lower-carbon fuels, and reduction of vehicle use or vehicle miles traveled (VMT). We anticipate that GHG emission reductions in this sector will be achieved largely through regulations and incentives. Since VMT and land use policies are so interrelated, we are examining ways to reduce VMT by changing the way we plan our communities. This can be accomplished through incentives, pricing signals, and other planning measures.

Because passenger vehicles (cars and light trucks) are responsible for 74 percent of the emissions from the transportation sector, they are the primary focus of initial reduction strategies for the transportation sector. The Pavley regulation (AB 1493) is an important regulation that has already been adopted and requires GHG emission reductions from passenger cars and light trucks. The State of California is currently challenging a U.S.EPA decision that prevents the implementation of this regulation. Although we are confident that we will prevail, we are also exploring additional strategies to ensure that new California vehicles achieve the maximum feasible and cost-effective reductions in GHG emissions. A symposium on this topic was held on April 21, 2008.

GHG emissions from the transportation sector also include emissions as a result of "goods movement." Increasing the efficiency of the way goods move throughout the state can have the dual benefit of reducing both GHG emissions and emissions of smog precursors and air toxics. With traffic at California ports expected to quadruple by 2020, reducing GHG emissions from this sector will be necessary to meet the State's 2020 GHG goal. Strategies in this sector include already adopted regulations to reduce truck idling and electrify ports, requirements reducing energy use in existing trucks and trailers, cleaner fuels, ships, and trains, and increased operational efficiencies such as improvements in dock-side container handling procedures, and transportation mode shifts.

One of the key strategies to reduce carbon impacts from California's transportation sector is the development of the Low Carbon Fuel Standard (LCFS). The LCFS will be a core measure in our AB 32 Scoping Plan and one of the Discrete Early Actions adopted by the Board. ARB is following the Governor's Jan. 2007 Executive Order (S-01-07) and is in the process for developing this regulation, which will lower the carbon intensity of motor fuels by 10 percent by 2020. The LCFS will require life cycle analyses to ensure that alternative fuels do not result in increased emissions of either criteria pollutants or GHGs.

Last month, the state's energy agencies issued a decision endorsing a GHG pollution cap and trade system for the state's electricity sector. The City of Los Angeles and other municipalities, as well as environmental justice (EJ) groups, opposed this decision.

In a letter to the Governor, the Mayor of Los Angeles stated that implementation of the energy agencies' recommendations would result in a huge "transfer of wealth" from

southern California energy customers to utilities that have lower greenhouse gas emissions. EJ groups assert that the proposals would result in pollution dumping in poor communities.

12. Please describe your views on cap and trade and its role in meeting the State's 2020 and 2050 greenhouse gas emission targets. How do you respond to the concerns raised by the City of Los Angeles and EJ groups?

We welcome the two Commission's suggestions to the Board. However, the ARB is the agency that is ultimately responsible for implementing AB 32 and we take that responsibility seriously. At this point, the Air Resources Board has made no decisions regarding the mix of strategies and compliance mechanisms that should be employed to meet the AB 32 emission reduction target. Clearly, ARB's regulatory programs and existing State policies to reduce GHG emissions will serve as the foundation for meeting the 2020 emission reduction target. The principles embodied in AB 32 will guide the Board in selecting an equitable, enforceable, and cost-effective mix of measures and compliance mechanisms to achieve the necessary reductions by 2020 and beyond. A cap and trade approach is one among many tools that ARB is considering, including direct regulations, economic incentives, and other market based approaches. The ultimate goal of our efforts will be to achieve the greatest environmental benefit for the least cost. In reviewing these options we will certainly carefully consider the concerns raised by the Mayor of Los Angeles.

With regard to environmental justice concerns, ARB's primary mandate continues to be the protection of public health from air pollution. Therefore, our climate change strategies will be fully supportive of our charge to meet health-based air quality standards and reduce health risks from toxic air pollutants, especially in low-income and minority communities.

ARB will conduct outreach to environmental justice communities as part of the AB 32 Scoping Plan implementation process. ARB is planning a series of community based meetings to inform communities about AB 32 implementation and the Scoping Plan. ARB will reach out to communities with the goal of communicating our objectives and will incorporate feedback from communities into our process. ARB will coordinate with environmental justice coordinators around the State, and attend existing environmental justice community meetings. ARB expects to begin conducting outreach to communities before the draft AB 32 Scoping Plan is released in June.

AB 32 authorized the ARB to impose fees to fund the new program it enacted into law. Last year, the Administration proposed funding the program out of a combination of Motor Vehicle Account revenues and Air Pollution Control Fund Revenues. This year, it proposes to fund the program from revenues out of the beverage Container Recycling Account.

13. Given the long term importance the Administration has placed on this program, should funding be more stable and consistent?

ARB has proposed a specific funding plan that will rely upon fees to fund ongoing program operations and fully repay all startup loans. We believe, however, that the specific structure of the fee program should be based on the Scoping Plan, which is our roadmap to implementing the State's GHG reduction program. We believe it is premature to design a fee program until the Scoping Plan lays out which sources and sectors are to be regulated and how the statewide reduction program will be structured.

Recently, the Legislative Analyst's Office suggested that that a fee structure could be developed with the information currently available, and then subsequently refined at some later date. Under this approach, however, ARB would need to develop two separate fee regulations in the space of two years. This would create uncertainty for the regulated community and could be inconsistent with the long-term goals of the Plan.

14. AB 32 does not limit the use of market mechanisms to cap and trade. Are there innovative market mechanisms such as congestion pricing, now being considered in New York and London, that should be considered? What other market incentives could reduce GHG's?

In addition to the cap and trade concept, ARB is investigating several other market-based compliance mechanisms that could be used to complement or supplement Scoping Plan strategies under consideration. The objective of these market-based mechanisms is to achieve the greatest environmental benefit for the least cost. Market-based measures include emission charges or user fees (e.g., recycling fees or variable rates for municipal recyclable waste); rebate and subsidy programs that compensate individuals or firms that buy green products or invest in green technologies, (e.g., for purchase of energy efficient appliances or electric lawnmowers); "on bill" financing to spread out payments for purchase of high-end energy efficient products for the home, (e.g., tankless or solar-assisted water heaters); and non-economic measures to increase consumer awareness of low carbon products, such as green labeling or the Energy Star program.

ARB is investigating innovative market mechanisms within all sectors. For example, the Transportation Sector involves the vehicle efficiency, fuels and vehicle usage, or vehicle miles traveled (VMT). One of the most effective ways to reduce GHG is by reducing VMT. Congestion pricing is one mechanism being considered. ARB is examining other market based mechanisms, such as the use of pricing signals, to reduce vehicle travel and support alternate modes of travel infrastructure, and is considering the merits of incentive programs as well as other ways to reduce emissions from vehicle use.

15. There are at least five different agencies in state government (ARB, CEC, CPUC, UC, CAL-EPA) spending nearly \$500 million on climate, air pollution, or energy related research, development, and demonstration. At a time of budget crisis, concerns have been expressed at the amount of money being spent by

these agencies and the lack of coordination or accountability for those expenditures. What steps do you think should be taken to ensure California's climate, air pollution, and energy related research is better coordinated?

There have been mechanisms in place for several years to coordinate climate and energy research. Air pollution research coordination and accountability derives from ARB's Research Screening Committee and from peer review of the Board's Annual Research Plan, Strategic Research Plan, and individual research projects. The Research Screening Committee (the Board's legislatively required oversight group) and peer review groups are composed of representatives from all major funding groups in California and the U.S. Subsequent review by the ARB Executive Office and approval by the Board assures that the projects are relevant to the Board's policy goals. In addition, the public and other stakeholders are encouraged to participate in the annual research planning process. The ARB has ensured that air pollution research is coordinated with ongoing climate change and energy research via quarterly meetings with the CEC.

Nonetheless, California state agencies have recognized that such coordination can always be improved, and have already taken the following steps: (1) The Climate Action Team formed a Research Coordination Subgroup for sharing of information on climate- and energy-related research, development, demonstration, and deployment (R+DDD) projects in California. Charter members include ARB, Cal-EPA, Caltrans, CEC, CPUC, and Resources, and will eventually include all agencies that fund or are clients for R+DDD activities. The group began meeting informally on a monthly basis last fall and continues the 2 year coordination of research on the impacts of climate change that, in part, laid the foundation for the Global Warming Solutions Act of 2006 (AB 32). (2) The CAT Research Coordination Subgroup began work on an R+DDD "Roadmap" for California four months ago, and has engaged leading academics from the UC system, private universities, and the National Research Council to provide input. The Roadmap will identify legislative mandates and other policy drivers, ongoing activities, and remaining gaps. When completed later this year, the Roadmap will be reviewed by the public, the California Council on Science and Technology, and the appropriate Boards and Commissions. The ARB will use the Roadmap to ensure that its research funds are targeted on the most important areas that support AB 32 requirements. (3) As part of the Roadmap, ARB staff is preparing a catalog of all State, Federal and private sector funded climate change and energy related projects in California. This catalog, when complete, will help identify areas of overlapping interest, and will be updated annually.

Vehicular Air Pollution

AB 1493 (Chapter 200 Statutes of 2002) required the ARB to adopt regulations to reduce GHG pollution from vehicular sources. Those regulations were adopted, but have never been implemented due to disputes in the courts and with the US EPA over federal preemption and waivers. AB 32, at Health and safety Code Section 38590, requires the ARB to adopt regulations to "backfill" the AB 1493 regulations if they don not take effect. What actions has the ARB taken to "backfill" the AB 1493 emission reductions from vehicles?

16. This past month, ARB voted to modify its Zero Emission Vehicle (ZEV) Rule in a manner that some have characterized as weakening the rule. Please explain your vote in favor of the modifications. Given that cars are a major source of air pollution, and that the costs of reducing Pollution often fall disproportionately on stationary sources, why did the board take the action it did on the ZEV Rule?

The ARB voted to strengthen the ZEV regulation. The current requirement for the 2012-2014 timeframe remains 25,000 ZEVs. The Board's vote tripled the minimum requirement proposed by staff, confirming its commitment to aggressive ZEV technology development. Overall, the Board's modifications to the ZEV program will result in more than 65,000 near-zero and zero emission vehicles, a 60 percent increase over the existing program. Some have suggested that by reducing the minimum number of pure ZEVs required and allowing plug HEVs to backfill requirements, that the rule was weakened. That simply is not the case. Plug HEVs are electric vehicles with zero emissions for much of their operation. They are one of the technologies identified in the AB 1007 report prepared by ARB and CEC as a needed technology to meet the 2050 GHG reduction target. Because they are nearest to commercialization of the ZEV technologies, they have the ability to provide near term GHG and smog emission reductions.

The modifications to the ZEV program will result in an air quality benefit over the existing program for the 2012 to 2014 timeframe: 3,400 tons of criteria pollutants (NOx and VOC) reduced and 1.4 million tons of climate change (CO2) emissions reduced on a well to wheel basis. This benefit can be attributed to the number of plug-in electric vehicles (PHEV) now included under the modified program. Additionally, the modifications will result in \$3.2 billion of avoided costs to the auto manufacturers.

The overall goal of the ZEV program has not changed. The program continues to achieve air pollution reductions in order to reach the Board's health based standards. The ZEV program also will continue to promote the development and use of the cleanest technologies commercially available, while still requiring auto manufacturers to develop and produce zero emission vehicles. Also, the program continues to promote ZEV enabling technology, rewarding and commercializing evolutionary technologies that move California towards the end goal of zero vehicular emissions.

Air Quality Incentive Programs

17. The ARB oversees several bond funding programs for clean air, as well as the AB 118 program and the Carl Moyer program. How much funding is available annually for each of these programs? Does the board have a breakdown of how these funds are distributed geographically? Are the funds targeted to areas with the greatest non-attainment and public health problems?

ARB Incentive Programs

Program		Funding per Fiscal Year (in million \$)								
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015+
Prop 1B: Goods Movement Bond		\$250	\$750 ¹							
Low-Emission School Bus		\$200	\$0							
Carl Moyer Program	State	\$90	\$90	\$90	\$90	\$90	\$90	\$90	\$90	\$61
	AB 923 ²	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$0
AB 118		\$0	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$0

1. The amount of the \$750 million appropriated each year is determined annually by the Legislature.

2. AB 923 local \$2 MV fees may be spent on the Carl Moyer Program, Lower Emission School Bus Program, the Agricultural Assistance Program, or car scrap programs.

Proposition 1B – Goods Movement Emission Reduction Program: A total of \$1 billion is available to clean up diesel emissions from the freight industry, upon appropriation by the Legislature. This program targets cleaning up California's truck fleet – which will significantly reduce diesel particulate emissions in communities, plus regional ozone and particulate pollution. The Board established geographic funding targets based on freight emissions, population and State Implementation Plan needs in each trade corridor:

- LA/Inland Empire: \$550 million
- Central Valley: \$250 million
- Bay Area: \$140 million
- San Diego/Border: \$60 million

Proposition 1B – Lower-Emission School Bus Program: \$200 million in funding is available for FY 2007-08. The implementing legislation directs ARB to allocate funds to each region based on the distribution of the oldest buses:

- South Coast: \$70 million
- San Joaquin Valley: \$39 million
- Sacramento: \$9 million
- Bay Area: \$8 million
- Other: \$65 million

The Lower Emission School Bus Program will reduce exposure of school children to diesel PM emissions by replacing all of the pre-1977 school buses with new cleaner buses. The program will also replace about 1,000 of the 3,500 remaining 1977-1986 buses and retrofit up to 3,500 with particulate filters.

Carl Moyer Program: State Carl Moyer Program funds are distributed to air districts according to the formula in the implementing legislation (H&SC §44299.2(i)). South Coast's percentage of these funds is commensurate with its percentage of the State's population. Funds are distributed to all other air districts based upon each district's

attainment status for federal air quality standards, particulate emissions, and historical program funding (H&SC §44299.2(i)). Approximate annual State Carl Moyer Program funding by air district is:

- South Coast: \$34M
- Bay Area: \$11M
- San Joaquin Valley: \$11M
- ARB Multi-District: \$9M
- Sacramento Region: \$6M
- Other districts: \$17M

State law also requires that at least fifty percent of funds in the five largest air districts must be spent in environmental justice areas. (H&SC §43023.5)

Air Quality Improvement Program (AB 118): ARB is responsible for the \$50 million per year AQIP program. AQIP program guidelines are in the initial stages of development and shall be brought to the Board for its consideration in Spring, 2009. ARB will work with air districts and other interested stakeholders during guideline development to ensure funds are distributed in a way that best enables California to meet its air quality challenges.

Air Quality/Environmental Justice

Low-income communities often suffer from increased pollution burdens due to their locations and the industrial activities, truck traffic, or other activities that take place adjacent to them.

18. What steps do you support to reduce air pollution impacts in EJ communities? What specific assessment and mitigation tools does the ARB use so EJ communities do not continue to suffer disproportionately from air pollution?

ARB has committed to making the achievement of environmental justice an integral part of its activities. The Board has taken several important steps to ensure environmental justice is addressed as it works to improve air quality and public health throughout California. Notably, on December 13, 2001, the Board established the foundation for ARB's EJ program by approving the Environmental Justice Policies and Actions (Policies) which establishes the framework for incorporating environmental justice into ARB's programs consistent with the directives of State law. There are a number of specific actions to support each Policy.

The policies include the following:

- Integrate environmental justice into all of ARBs programs, policies and regulations
- Strengthen ARBs outreach and education efforts

- Work with local air districts to meet health-based air quality standards and reduce health risks from toxic air pollutants
- Strengthen enforcement activities at the community level
- Assess, consider, and reduce cumulative emissions, exposures, and health risks when developing and implementing our programs
- Work with local land use agencies, transportation agencies, and air districts to develop ways to assess, consider, and reduce cumulative emissions, exposures and health risks from air pollution through general plans, permitting, and other local actions
- Support research and data collection needed to reduce cumulative emissions, exposure, and health risks

While these Policies focus on ARB as an organization, they also reflect the need for the local air pollution control and air quality management districts (local air districts) and other local agencies to play their part. The local air districts are most directly responsible for the regulation of air pollution from businesses and industries in California. Local land-use agencies are directly responsible for the siting of new air pollution sources, and local air districts also play an important role by issuing permits for new sources of air pollution. ARB has committed to work in partnership with these agencies to improve the information that local agencies use to make planning and permitting decisions.

ARB has an aggressive program to control motor vehicle pollution, the principal source of air toxics and other emissions leading to the violation of clean air standards. For example, ARB approved the Emission Reduction Plan for Ports and Goods Movement which addresses environmental and community impacts from goods movement in California and identifies mitigation measures necessary for reducing those impacts. By working to improve siting and mitigation practices, and further controlling sources within ARB's jurisdiction, the Board is helping to address environmental justice issues at the community level throughout California.

AB 32 requires the establishment of an EJ Advisory Committee to assist the ARB in assessing the impacts of its regulations on EJ communities. It has been reported that the board has given no staff or funding to the EJ Advisory Committee, while it has provided significant resources to the Economic and Technology Advancement Advisory Committee and to the Market Advisory Committee established by executive order.

19. Please describe the resources allocated to each advisory committee.

Environmental Justice Advisory Committee (EJAC or Committee): The EJAC was formed by ARB in advance of the timeline directed by AB 32. The main purpose for the EJAC is to advise ARB in its development of the Scoping Plan and any other pertinent matters in implementing AB 32.

The 10 Committee members were appointed by the Board at the January 2007 Board meeting. The Committee held five public meetings, March, May, October of 2007 and January and March of 2008. The EJAC discussed key issues ranging from Early Actions and the Low Carbon Fuel Standard to ARB's efforts to conduct non-economic analyses of the Scoping Plan's design.

ARB staff has provided support to the EJAC and will continue to do so. Staff activities include:

- Developing, maintaining and updating EJAC web pages
- Scheduling EJAC meetings
 - Developing consensus for date, time and location
 - Arranging and funding costs for member travel and meals (meals at 2 of 5 meetings)
 - Arranging for needed materials and supplies for meetings
- Arranging for facility usage at the Cal/EPA Headquarters Building
- Sending out public list serve notices of meetings and agendas
- Coordinating distribution of informational material and other materials with members
- Collecting recommendations/resolutions from the Committee for distribution to ARB staff
- Providing staff presentations and response to questions as requested by the Committee
- Arranging and conducting monthly meetings between EJAC co-chairs and ARB EJAC team to discuss direction and priorities

In summary, ARB has provided staff support of approximately 25-30% of a PY over the period of about a year (this includes staff and management support). This support will continue into the future as part of ARB's commitment under AB 32.

Economic and Technology Advancement Advisory Committee (ETAAC or Committee):

The ETAAC was formed by ARB as directed by AB 32. The twenty Committee members were appointed by the Board at the January 2007 Board meeting. The Committee held nine public meetings at several locations across California, and delivered its final report of recommendations at the Board's February 2008 Board meeting. Throughout this period, the Committee's activities were supported by staff from the ARB. Similar to the support provided to the EJAC, staff activities included:

- Develop, maintain and update ETAAC web pages
- Schedule ETAAC meetings
 - Includes developing consensus for date, time and location
 - Arrange for needed materials and supplies for meetings
- Provide summaries of related research funding and give presentations to the Committee

- Arrange for facility usage and support from Stanford University, University of California at Merced, South Coast Air Quality Management District, as well as at the Cal/EPA Headquarters Building
- Send out public list serve notices of meetings
- Coordinate distribution of public comments and other materials with members

In addition, staff reviewed and commented on the draft report, and arrange for a professional technical editor to produce the final report. ARB provided \$5,000 out of \$18,000 that was spent for the technical writer contract.

ARB provided staff support of approximately one PY over the period of about a year largely focused on the production of a final report (more than 300 pages) to advise the Board on activities that will facilitate investment in and implementation of technological research and development opportunities (HS 38591 (d)).

Market Advisory Committee (MAC): The MAC was created in December 2006 by Cal/EPA Secretary Linda Adams pursuant to Governor's Executive Order S-20-06. The Executive Order charged the Committee with developing recommendations for ARB's consideration on the design of a market-based compliance program to reduce GHG emissions. The recommendations were released in a June 2007 report to the Board and provide information that staff is considering along with other potential strategies for the Scoping Plan. Following the release of its report, the MAC ceased to exist.

The MAC was staffed by a Cal/EPA contractor. Although ARB actively tracked the Committee's activities, ARB staff support was quite limited, and included having staff observe monthly stakeholder and committee working group meetings, responding to the Committee's request for technical information, and summarizing public comments for ARB management's information.

20. AB 32 also requires evaluation of market based compliance mechanisms for their impacts on EJ communities. Is the board conducting any such analysis? If so, please describe.

Prior to inclusion of market mechanisms in regulations implementing the AB 32 Scoping Plan, ARB must "1) consider the potential for direct, indirect, and cumulative emission impacts, including localized impacts in communities that are already adversely impacted by air pollution; 2) design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants; [and] 3) maximize additional environmental and economic benefits for California, as appropriate." This is in addition to AB 32's requirement that the Scoping Plan consider environmental and public health benefits, and the legal requirement to prepare a California Environmental Quality Act (CEQA) equivalent analysis.

ARB is assessing the impacts and benefits of the AB 32 Scoping Plan. First, ARB will examine the measures of the Scoping Plan at statewide and regional levels, both through economic modeling associated with Scoping Plan development and during measure development activities. The economic modeling can provide information on

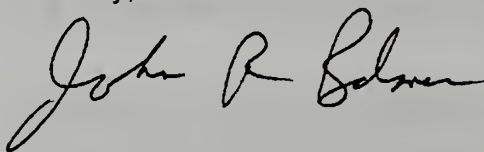
changes to income brackets and on changes to fuel pricing, which are key potential economic impacts to low-income communities. Second, Climate Action Team subgroups are being asked to identify the potential impacts of their measures on EJ communities, and this can be used to identify those measures most likely to have non-economic impacts or benefits. Based on this evaluation, ARB is exploring the data available to perform regional health analysis and is working with local Air Quality Management Districts to identify tools available to perform community level analysis.

On April 25, ARB will begin a stakeholder process to solicit feedback on its proposed impact analysis for emissions and air quality, including identification of additional tools and specific scenarios of concern. The methodologies and results of this impact analysis will be vetted in a public process, and will also be discussed with a subgroup of the Environmental Justice Advisory Committee created for this purpose. ARB is just now undertaking this process because of the need to first develop the components of the Scoping Plan that will be the subject of the analysis and to define the economic modeling that will be used to help identify alternatives and to support the emissions and air quality analysis.

AB 32 goes further to direct that the regulations adopted to implement the Scoping Plan be designed to maximize total benefits to California; to ensure that activities do not disproportionately impact low-income communities, interfere with efforts to achieve and maintain State and Federal air quality standards or efforts to reduce toxic air contaminant emissions; and to consider overall societal benefits, including reductions in other air pollutants and other benefits to the environment and public health. One example of a regulation currently in the process of being developed is the Low Carbon Fuel Standard, for which ARB staff will complete the necessary analysis prior to Board consideration.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Balmes". The signature is fluid and cursive, with the first name "John" being the most prominent.

John R. Balmes, M.D.

cc: The Honorable Don Perata, Chair
Senate Rules Committee
State Capitol, Room 205
Sacramento, Ca 95814

The Honorable Jim Battin, Vice Chair
Senate Rules Committee
State Capitol, Room 3060
Sacramento, Ca 95814

The Honorable Gil Cedillo
Senate Rules Committee
State Capitol, Room 5100
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The Honorable Bob Dutton
Senate Rules Committee
State Capitol, Room 5094
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The Honorable Alex Padilla
Senate Rules Committee
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Air Resources Board



Linda S. Adams
Secretary for
Environmental Protection

Mary D. Nichols, Chairman
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Arnold Schwarzenegger
Governor

May 29, 2008

Ms. Nettie Sabelhaus
Rules Appointments Director
State Capitol, Room 420
Sacramento, California 95814

Senate Rules Committee

MAY 28 2008

Dear Ms. Sabelhaus,

Appointments

Thank you for the opportunity to respond to the important issues raised by the Senate Rules Committee. I am honored to be appointed to serve as the Chairman of the California Air Resources Board and have enjoyed working closely with both the Governor and Legislature for the past year on critical air quality and climate change issues.

Background

1. What are your goals and objectives as a member of the Air Resources Board (ARB)? What specific policies do you promote to maintain the board's tradition as a leader and pacesetter in clean air policy?

My goal for the Air Resources Board is to leave it a stronger organization than I found it. That means providing policy leadership during a time of transition to new climate change responsibilities while maintaining and strengthening the Board's core public health protection mission. I believe that scientific excellence and integrity is the basis for the ARB's past and future success in cutting air pollution. As we expand our focus to carbon dioxide and other greenhouse gases, ARB needs to be able to understand and use information from a wider array of disciplines and consider new policy tools, including market mechanisms.

Within the first months of my tenure as Chairman, the Board reviewed and added to the list of discrete early measures to cut greenhouse gas emissions and adopted a long-needed rule to cut emissions of smog and soot from off-road heavy duty diesel construction equipment. In these and other controversial proceedings, I took an active role in meeting with both environmental activists and regulated industry, listening to their concerns, reaching out to build public understanding and support for the Board's actions, and attempting to produce effective, enforceable rules that protect public health.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

When the ARB met in Fresno in May we adopted a SIP to meet federal health standards for fine particles, adding measures to strengthen the plan. At the same meeting, we released a draft report indicating that the health risks of these particles are much greater than previously estimated. Staff approached me early in my tenure to make me aware of their concern that the most recent science appeared to show harmful effects at levels much lower than the current legal threshold; we decided to convene a peer review panel of outstanding researchers, and produce a document that might lead to a conclusion that our current rules, tough as they are, are not sufficient to protect public health. The alternative, which would be to ignore or wait for the federal EPA to act on this information, would be inconsistent with our commitment to make policy based on the best possible science.

Another priority is developing and maintaining a strong working partnership with local air districts. On a statewide basis, these agencies have resources equal to the ARB, and they are the first source of information, permits and plans regarding air pollution; increasingly, they are involved with greenhouse gases as well. Along with our new executive officer, James Goldstene, we have made considerable progress in collaborative rulemaking and enforcement activities.

Finally, I believe that successful implementation of AB32 by the ARB is critical to California's continued leadership in the field of green technology and green jobs. The scoping plan now under development represents the first comprehensive plan by a major state or national government demonstrating how greenhouse gases can be reduced to 1990 levels by 2020, in a manner that is cost-effective, fair, and supportive of other environmental, health and social goals. I expect that the draft plan will present many ideas and lay out some options for review; the public engagement process will be extensive and the final plan will represent our best effort to incorporate input from stakeholders and experts from around the world. Leading the Board through this process to adoption by the end of 2008 is a challenge that excites me, and I bring to it all my accumulated experience working with air, natural resources, and energy issues over the past 30 years along with a total commitment to California's success.

2. How do you view your role as one of the state's chief air regulators and as a pleasure appointment of the Governor's? Do you believe you have sufficient independence to act in the public interest without undue interference from your appointing authority?

The Air Resources Board has always been composed entirely of appointees who serve at the pleasure of the Governor, unlike some boards and commissions with term appointees or a mix of appointing authorities. The ARB has an unmatched record of

regulatory independence and bipartisan support from both the Legislature and the Governor. I attribute that ability to keep focused on the mission to two important features of California's air pollution program: an outstanding technical staff, comprised largely of women and men who have dedicated their careers to public service despite ample opportunities to work in the private sector because of the quality of the work they can do at ARB; and strong public demand for clean air, even when it means that consumers may be asked to pay a bit more for cars, gasoline and other products. I take great pride in the ARB's historic accomplishments in the field of smog and toxic air pollution reduction, and I am convinced its role will be even more important in years to come as we strive to reduce California's dependence on petroleum and build a more sustainable economy. When I met with Gov. Schwarzenegger to discuss the possibility of my returning to the ARB, I was convinced that he shared my view, and in the 11 months I have been here I have been given unwavering support from the Governor and his staff.

Attainment of State and Federal Air Standards

3. The Governor's 2003 Environmental Action Plan committed his administration to reduce air pollution emissions by 50 percent by 2010. Is the Administration on track to meet this goal? If not, where does it stand? What specific measures is the board taking to meet the Governor's goal? Please specify the emission reductions from each measure.

The Administration has focused on the actions necessary to address the most significant air quality issues facing California. In 2007 ARB adopted a new State Strategy that doubles the rate of key emission reductions (oxides of nitrogen) over the next few years. The 2007 State Strategy incorporates the Goods Movement Plan and Diesel Risk Reduction Plan strategies and provides key emission reductions needed in State Implementation Plans (SIPs) for nonattainment areas. ARB is also implementing the Proposition 1B air quality bond program with the goal of achieving the maximum public health benefit. Together, these priorities represent the most significant actions needed to reduce the public health impacts of air pollution in California.

4. What is the status of the State's compliance with the State Implementation Plan (SIP)? What additional measures need to be taken to achieve attainment of the federal air standards pursuant to the SIP?

Urban areas of the State considered nonattainment of the federal 8-hour ozone standard include: the South Coast and San Joaquin Valley, San Francisco Bay Area, Sacramento, and San Diego. Of these, the Bay Area now meets the standard. In

addition, multiple rural areas located downwind of the major urban areas are also nonattainment of the federal 8-hour ozone standard. These include: Antelope Valley and Western Mojave Desert, Coachella Valley, Ventura County, Eastern Kern County, Butte County and the Sutter Buttes, Western Nevada County and the Mountain Counties, and Imperial County.

California has two nonattainment areas for the federal PM_{2.5} standard: the South Coast and San Joaquin Valley. These areas are also considered nonattainment for the federal PM₁₀ standard, although PM₁₀ levels in the San Joaquin Valley now meet the standard. In addition, Owens Lake and Imperial County are also nonattainment for the federal PM₁₀ standard. Imperial is currently developing a new PM₁₀ attainment plan.

In 2007, ARB submitted an updated State Strategy and 8-hour ozone SIPs for the South Coast, Coachella Valley, the San Joaquin Valley and San Diego to U.S. EPA, together with the South Coast's PM_{2.5} SIP. The San Joaquin Valley has also developed a PM_{2.5} SIP which will be considered by the local Board on April 30.

Later this year, local boards will consider adopting 8-hour ozone SIPs for Antelope Valley and Western Mojave Desert, Ventura County, Sacramento, and Imperial County. SIPs for many of the rural areas (such as the Mountain Counties) are not yet due to U.S. EPA. Planning requirements for these areas, including the SIP submittal deadline, are pending due to litigation over U.S. EPA's 8-hour ozone implementation rule.

Each nonattainment area's SIP outlines a combination of existing air quality program elements and new measures needed in that region to attain the federal air quality standards. The new measures are described in the 2007 State Strategy, approved by the Board last September. For two areas – the South Coast and San Joaquin Valley – the SIPs include a commitment to develop long term measures, which will provide the final increment of emission reductions needed to meet the federal 8-hour ozone standard.

5. Under the California Clean Air Act of 1988, the State board and the local air districts are charged with achieving and maintaining State ambient air standards along with the federal standards. What parts of the State have not achieved those standards and what actions is the ARB taking to meet the State act requirements?

Virtually all of California is nonattainment for the State ozone and particulate matter air quality standards. In the case of ozone, only Alpine, Del Norte, Humboldt, Lake, Lassen, Mendocino, Modoc, Plumas, Sierra, and Trinity Counties are in attainment of both the State 1-hour and 8-hour ozone standards. For the State PM10 and PM2.5 standards, only Amador, Lake, Mariposa, Siskiyou, Sonoma, and Tuolumne Counties attain both.

The 2007 State Strategy will provide significant progress towards attaining the State's ambient air quality standards throughout California. In addition to the measures in the 2007 State Strategy, the Board works to ensure that the regional air quality districts adopt the most effective feasible emission control measures for stationary and area-wide sources.

Air Quality/International Goods Movement

According to data collected by your agency and the Business, Transportation, and Housing Agency, there are hundreds of additional deaths per year from goods movement-related air pollution, and the mortality rate is increasing. In addition, there are thousands of increased incidences of respiratory illnesses and other adverse health effects. At the same time, goods movement provides jobs and increased economic benefits to the state.

6. What actions do you support to address the health effects of air pollution from the movement of goods, especially in low-income neighborhoods adjacent to ports like West Oakland, San Pedro, and Wilmington?

California communities along the trade corridors bear the brunt of the impacts from the growing freight industry to satisfy U.S. demands for goods. Diesel pollution and its serious health consequences, traffic and noise around freight facilities, and choked roads across our urban areas are making life increasingly difficult for residents.

The seriousness of the problem demands an aggressive, comprehensive solution. Government at international, national, state and local levels must push the limits of technology with regulatory strategies and incentive funds. The entire freight industry and all of its customers must make unprecedented investments in cleaner technology and fuels, and build "green" into all of their operations for greater efficiency. Environmental and community advocates need to continue pressing all of us for quick, effective action.

ARB continues to pursue multiple avenues to address the community impacts of air pollution from freight movement. Staff has completed extensive health risk

assessments for California's three largest seaports and 16 major rail yards that emphasize the high health risks in nearby communities. These results inform ARB's decisions on rulemakings, help us set priorities for incentive funding, and give us a tool to gauge the effectiveness of our actions to reduce localized health risk.

ARB must continue to aggressively pursue regulatory strategies and implement incentives to fulfill the goals of the 2006 Emission Reduction Plan for Ports and Goods Movement and California's State Implementation Plans for the South Coast and San Joaquin Valley. The Board's existing programs and recently adopted rules for drayage trucks, ship fuels and ships at dock, harbor craft, and cargo equipment will reduce diesel PM emissions from freight operations in half between 2005 and 2020, despite significant cargo growth. To meet our goals at the local, regional, and statewide levels, we must proceed with adoption of the major upcoming rules on the Board's 2008 agenda for diesel trucks operating in California and ship main engine fuels.

The \$900 million a year in combined incentive funds pledged by the State, local air districts, and the Ports of Los Angeles and Long Beach for cleaner vehicles, equipment, and fuels in California are the third vital element to addressing community health risk from freight operations and other mobile pollution sources.

The slate of existing and upcoming regulations, together with available incentive funds, will put California solidly on track to achieve the Board's statewide goal to cut the freight-related health risk from diesel particulate matter by 85 percent by 2020 and help attain federal air quality standards in the nation's most severely polluted regions. I am committed to these objectives.

Under past leadership at the ARB, the board negotiated and entered into a voluntary Memorandum of Understanding (MOU) with the railroad industry to reduce emissions from rail activities associated with goods movement. This MOU, and the process by which it was entered into, has been strongly criticized by air districts and environmental groups who feel that the ARB could be doing more to reduce diesel emissions from rail.

7. Please describe your views on the Rail MOU. Was the process by which it was entered into deficient from the public standpoint? Should the board re-negotiate the MOU, or scrap it altogether?

As you know, I was not part of the Board when the ARB railroad Agreement was signed in June 2005. As some of you may remember, in response to significant public criticism, the ARB Board approved Resolution 05-40 in July of 2005 which requires that future MOUs have greater public participation and be subject to Board approval at a

public hearing. I would ensure that the spirit and provisions of ARB Resolution 05-40 would be fully met should we consider any future railroad MOUs.

As to my views on the 2005 ARB/Railroad Agreement, I do know that this MOU has provided California with a 20 percent reduction in diesel exhaust and other pollutants within the past three years. To accomplish this, UP and BNSF: 1) retrofitted nearly all of their over 400 intrastate locomotives with idle reduction devices, 2) exceeded the requirements for the use of CARB and ultra low sulfur diesel fuels, and 3) have continued to meet the smoking locomotive compliance rate of 99 percent. The ARB and railroads have also prepared health risk assessments for 16 major railyards and have begun the process to identify additional risk mitigation options at each of these yards. All of the major provisions of the 2005 Agreement are nearly fully implemented. Therefore, I do not think it would be in the public's best interest to renegotiate or scrap the 2005 railroad Agreement.

U.S. EPA recently released the final locomotive rulemaking and it should provide some emission benefits from the new Tier 4 locomotives and the provisions for remanufactured existing locomotives. However, due to the potential future growth from goods movement, there could be a significant shortfall in both NOx and PM emission reductions in California. With the Clean Air Act explicit about federal authority to regulate locomotive emissions, California may need to rely on future railroad Agreements in order to make progress in meeting air quality goals.

Climate Change/Greenhouse Gas Emissions Reductions

The Governor has made reducing greenhouse gas pollution a cornerstone of his administration's environmental policies. He has stated that urgent and immediate action is needed to address climate change.

The Global Warming Solutions Act of 2006 (commonly referred to as AB 32), which requires the board to establish an overall state limit on greenhouse gas (GHG) pollution, and to adopt all technologically feasible and cost-effective pollution reductions to achieve that limit. The law authorizes the board to adopt "market-based compliance mechanisms" like a cap and trade system only after extensive process and policy actions have been taken by the board.

The Governor also has issued a series of executive orders establishing a Climate Action Team in state government to reduce GHG pollution from state agency activities, setting a 2050 limit on pollution, establishing various advisory committees and duties.

It is widely assumed that meeting the objectives of AB 32, and the longer term targets articulated by the Governor in executive orders, will require a fundamental transformation in the California economy from a fossil-fuel based economy to a new energy economy.

8. Please describe the actions the board has taken to date to implement the law and the Governor's executive orders and those actions that will be taken in 2008 to implement the law.

Since the Legislature passed and the Governor signed AB 32 seventeen months ago, ARB has worked diligently to meet the goals of the bill on an accelerated timeframe. ARB is on track and on time in meeting all requirements of the bill. In 2007, the Board accomplished the following specific requirements of AB 32:

- Developed and adopted mandatory emission reporting requirements for the 800 largest stationary sources of GHG emissions (Health and Safety Code, Section 38530).
- Refined California's statewide greenhouse gas inventory and adopted the 1990 GHG emissions baseline that defines the 2020 target (H&SC §38550).
- Published a list of Early Action measures, including nine Discrete Early Actions for which ARB will adopt regulations to be enforceable by January 1, 2010 (H&SC §38560.5(a)).
- Adopted port electrification regulation (one of the Discrete Early Action Measures) that will reduce toxics, ozone precursors, and GHGs, and initiated work on other early actions (H&SC §38560.5(b)).
- Adopted a forestry management protocol enabling the identification of real and verifiable tons of carbon dioxide that can be stored in California's forests (H&SC §38571).
- Established the Environmental Justice Advisory Committee, with 10 members representing communities in all regions of the state (H&SC §38591(a)).
- Established the Economic and Technology Advancement Advisory Committee (ETAAC) with 20 members representing California's diverse economy (H&SC § 38591(d)).
- Adopted a policy statement to encourage voluntary efforts to reduce GHG emissions prior to the full implementation of AB 32 (H&SC § 38562(b)(3)).

In addition to meeting these specific requirements, in 2007 ARB also worked with the Climate Action Team to establish and support multi-agency technical subgroups that are developing and assessing reduction measures across all sectors; held two Scoping

Plan workshops, focusing on Plan structure and overviews of possible reduction opportunities in each sector; developed a web site, list serves and comprehensive online calendar for announcement of AB 32 related activities and events; solicited, reviewed and published public comments and ideas for GHG reduction measures; and staffed up with more than 108 new hires focused on AB 32 implementation. These staff, which include transfers of existing ARB employees, staff from other state agencies, and staff new to state service, are distributed throughout the Board and represent a significantly increased capacity to implement climate programs in California.

This year, ARB will continue work on implementing several of the Discrete Early Action Measures, including the development of the Low Carbon Fuel Standard and implementation of measures to reduce emissions from auto refrigerants, landfill gas, truck efficiency, semiconductor PFCs, can propellants, tire inflation, and reduced sulfur hexafluoride (SF6). The Board will also commence GHG emissions tracking and get prepared for the reporting of emissions in 2009, with rigorous verification procedures.

One of the largest elements of AB 32 is the development of the Scoping Plan. ARB staff is currently developing the evaluation framework of the Scoping Plan to ensure that the recommendations in the Plan meet all statutory requirements in AB 32. This includes developing a suite of programs and measures to reduce GHGs throughout the California economy taking into account the unique abilities and needs of each sector; conducting economic analysis and technical workgroup meetings; receiving and reviewing preliminary assessments of potential measures, including estimates of GHG emissions reduction, cost, and potential environmental co-benefits and impacts on environmental justice communities and public health; preparing comprehensive economic analysis of possible policy approaches, including direct regulation, a cap and trade system, and a carbon fee; and performing noneconomic analysis of possible policy approaches, including environmental and localized public health and impacts as necessary (H&SC §38561(d) and H&SC §38570(b)).

In late June, staff will release a draft of the Scoping Plan, based on input from the public workshops, advisory groups, and the Climate Action Team. ARB will use the draft plan to frame public workshops over the summer and to prepare the Scoping Plan proposal for presentation to the Board at the end of the year (H&SC §38561(a)).

ARB has also undertaken various activities to complement the requirements of AB 32. These include the facilitation of the development of a "road map" for climate and energy related Research Development, Demonstration and Deployment (R&DDD) to coordinate R&DDD projects in California, and learning from international experts in all areas of interest, including economics, markets, clean technology deployment, health analysis, and specific industrial sectors.

Finally, ARB is demonstrating its strong commitment to a well-informed and transparent public process. This includes outreach to stakeholders through meetings, workshops, and speaking engagements, and consultation with national and international governments and other experts. For example, ARB is planning a series of community meetings to enable broad-based comment on the draft Scoping Plan (H&SC §38561(g)), and conducting scores of stakeholder meetings within the different sectors examined through the Scoping Plan process (H&SC §38561(g)). Along with the UC Davis Institute of Transportation Studies, ARB is also co-hosting an April 2008 symposium on reducing vehicle GHG emissions from passenger vehicles (H&SC §38590).

9. Have any of those actions resulted in quantifiable and measurable reductions in GHG pollution? If so, how much GHG pollution has been reduced to date? How much pollution is expected to be reduced in the 2008-2010 period from measures adopted by the board pursuant to AB 32?

In general, measures adopted pursuant to AB 32 will not achieve reductions in the 2008-2010 timeframe. AB 32 recognized that time is needed to develop and implement regulatory measures, and therefore under the bill even the discrete early action measures—which will “jump start” our reduction efforts—are given until January, 2010 to take effect.

However, the Pavley GHG emissions vehicle standards (AB 1493) are expected to reduce climate change emissions by approximately 0.6 MMT in 2010, and 30 million metric tons in 2020 (representing 17-percent of the 2020 target). With the implementation of these standards delayed by lawsuits, and the outcome of our legal challenge to USEPA's denial of our necessary waiver request still pending, actual GHG reductions will depend on the timing of actual program implementation. We are confident that we will prevail in obtaining our waiver and are vigorously pursuing our appeal.

The green ports measure adopted in 2007 was already being pursued for its criteria pollutant and toxics benefits and was also identified as an AB 32 discrete early action in recognition of its greenhouse gas benefits and while it does not produce substantial benefits prior to 2010, the measure is estimated to produce a 0.3 MMT reduction in 2015, and 0.5 MMT reduction in 2020.

In addition to the adopted measures, the Board approved a policy statement to encourage voluntary efforts to reduce GHG emissions. These voluntary efforts to decrease fuel and energy use and increase energy efficiency will reduce GHG emissions. ARB's voluntary policy statement is intended to provide more

regulatory certainty for those entities wishing to move forward with early GHG reductions.

10. According to various reports and presentations made by Administration agencies, transportation accounts for over 40% of the GHG pollution produced in the state. What actions do you support to reduce GHG pollution from transportation sources?

It is critical that the transportation sector achieve its fair share of the emission reductions needed to meet the State's 2020 goal, because of its large size. This reduction in GHG emissions can be achieved through the use of currently available and emerging technologies. GHG reductions will come from three overarching strategies: more efficient vehicles, lower-carbon fuels, and reduction of vehicle use or vehicle miles traveled (VMT). We anticipate that GHG emission reductions in this sector will be achieved largely through regulations and incentives. Since VMT and land use policies are so interrelated, we are examining ways to reduce VMT by changing the way we plan our communities. This can be accomplished through incentives, pricing signals, and other planning measures.

Because passenger vehicles (cars and light trucks) are responsible for 74 percent of the emissions from the transportation sector, they are the primary focus of initial reduction strategies for the transportation sector. The Pavley regulation (AB 1493) is an important regulation that has already been adopted and requires GHG emission reductions from passenger cars and light trucks. The State of California is currently challenging a U.S.EPA decision that prevents the implementation of this regulation. Although we are confident that we will prevail, we are also exploring additional strategies to ensure that new California vehicles achieve the maximum feasible and cost-effective reductions in GHG emissions. A symposium on this topic was held on April 21, 2008.

GHG emissions from the transportation sector also include emissions as a result of "goods movement." Increasing the efficiency of the way goods move throughout the state can have the dual benefit of reducing both GHG emissions and emissions of smog precursors and air toxics. With traffic at California ports expected to quadruple by 2020, reducing GHG emissions from this sector will be necessary to meet the State's 2020 GHG goal. Strategies in this sector include already adopted regulations to reduce truck idling and electrify ports, requirements reducing energy use in existing trucks and trailers, cleaner fuels, ships, and trains, and increased operational efficiencies such as improvements in dock-side container handling procedures, and transportation mode shifts.

One of the key strategies to reduce carbon impacts from California's transportation sector is the development of the Low Carbon Fuel Standard (LCFS). The LCFS will be

a core measure in our AB 32 Scoping Plan and one of the Discrete Early Actions adopted by the Board. ARB is following the Governor's Jan. 2007 Executive Order (S-01-07) and is in the process for developing this regulation, which will lower the carbon intensity of motor fuels by 10 percent by 2020. The LCFS will require life cycle analyses to ensure that alternative fuels do not result in increased emissions of either criteria pollutants or GHGs.

Last month, the state's energy agencies issued a decision endorsing a GHG pollution cap and trade system for the state's electricity sector. The City of Los Angeles and other municipalities, as well as environmental justice (EJ) groups, opposed this decision.

In a letter to the Governor, the Mayor of Los Angeles stated that implementation of the energy agencies' recommendations would result in a huge "transfer of wealth" from southern California energy customers to utilities that have lower greenhouse gas emissions. EJ groups assert that the proposals would result in pollution dumping in poor communities.

11. Please describe your views on cap and trade and its role in meeting the State's 2020 and 2050 greenhouse gas emission targets. How do you respond to the concerns raised by the City of Los Angeles and EJ groups?

We welcome the two Commission's suggestions to the Board. However, the ARB is the agency that is ultimately responsible for implementing AB 32 and we take that responsibility seriously. At this point, the Air Resources Board has made no decisions regarding the mix of strategies and compliance mechanisms that should be employed to meet the AB 32 emission reduction target. Clearly, ARB's regulatory programs and existing State policies to reduce GHG emissions will serve as the foundation for meeting the 2020 emission reduction target. The principles embodied in AB 32 will guide the Board in selecting an equitable, enforceable, and cost-effective mix of measures and compliance mechanisms to achieve the necessary reductions by 2020 and beyond. A cap and trade approach is one among many tools that ARB is considering, including direct regulations, economic incentives, and other market based approaches. The ultimate goal of our efforts will be to achieve the greatest environmental benefit for the least cost. In reviewing these options we will certainly carefully consider the concerns raised by the Mayor of Los Angeles.

With regard to environmental justice concerns, ARB's primary mandate continues to be the protection of public health from air pollution. Therefore, our climate change strategies will be fully supportive of our charge to meet health-based air

quality standards and reduce health risks from toxic air pollutants, especially in low-income and minority communities.

ARB will conduct outreach to environmental justice communities as part of the AB 32 Scoping Plan implementation process. ARB is planning a series of community based meetings to inform communities about AB 32 implementation and the Scoping Plan. ARB will reach out to communities with the goal of communicating our objectives and will incorporate feedback from communities into our process. ARB will coordinate with environmental justice coordinators around the State, and attend existing environmental justice community meetings. ARB expects to begin conducting outreach to communities before the draft AB 32 Scoping Plan is released in June.

AB 32 authorized the ARB to impose fees to fund the new program it enacted into law. Last year, the Administration proposed funding the program out of a combination of Motor Vehicle Account revenues and Air Pollution Control Fund Revenues. This year, it proposes to fund the program from revenues out of the beverage Container Recycling Account.

12. Given the long term importance the Administration has placed on this program, should funding be more stable and consistent?

ARB has proposed a specific funding plan that will rely upon fees to fund ongoing program operations and fully repay all startup loans. We believe, however, that the specific structure of the fee program should be based on the Scoping Plan, which is our roadmap to implementing the State's GHG reduction program. We believe it is premature to design a fee program until the Scoping Plan lays out which sources and sectors are to be regulated and how the statewide reduction program will be structured.

Recently, the Legislative Analyst's Office suggested that that a fee structure could be developed with the information currently available, and then subsequently refined at some later date. Under this approach, however, ARB would need to develop two separate fee regulations in the space of two years. This would create uncertainty for the regulated community and could be inconsistent with the long-term goals of the Plan.

13. AB 32 does not limit the use of market mechanisms to cap and trade. Are there innovative market mechanisms such as congestion pricing, now being considered in New York and London, that should be considered? What other market incentives could reduce GHG's?

In addition to the cap and trade concept, ARB is investigating several other market-based compliance mechanisms that could be used to complement or supplement Scoping Plan strategies under consideration. The objective of these market-based mechanisms is to achieve the greatest environmental benefit for the least cost. Market-based measures include emission charges or user fees (e.g., recycling fees or variable rates for municipal recyclable waste); rebate and subsidy programs that compensate individuals or firms that buy green products or invest in green technologies, (e.g., for purchase of energy efficient appliances or electric lawnmowers); "on bill" financing to spread out payments for purchase of high-end energy efficient products for the home, (e.g., tankless or solar-assisted water heaters); and non-economic measures to increase consumer awareness of low carbon products, such as green labeling or the Energy Star program.

ARB is investigating innovative market mechanisms within all sectors. For example, the Transportation Sector involves the vehicle efficiency, fuels and vehicle usage, or vehicle miles traveled (VMT). One of the most effective ways to reduce GHG is by reducing VMT. Congestion pricing is one mechanism being considered. ARB is examining other market based mechanisms, such as the use of pricing signals, to reduce vehicle travel and support alternate modes of travel infrastructure, and is considering the merits of incentive programs as well as other ways to reduce emissions from vehicle use.

14. There are at least five different agencies in state government (ARB, CEC, CPUC, UC, CAL-EPA) spending nearly \$500 million on climate, air pollution, or energy related research, development, and demonstration. At a time of budget crisis, concerns have been expressed at the amount of money being spent by these agencies and the lack of coordination or accountability for those expenditures. What steps do you think should be taken to ensure California's climate, air pollution, and energy related research is better coordinated?

There have been mechanisms in place for several years to coordinate climate and energy research. Air pollution research coordination and accountability derives from ARB's Research Screening Committee and from peer review of the Board's Annual Research Plan, Strategic Research Plan, and individual research projects. The Research Screening Committee (the Board's legislatively required oversight group) and peer review groups are composed of representatives from all major funding groups in California and the U.S. Subsequent review by the ARB Executive Office and approval by the Board assures that the projects are relevant to the Board's policy goals. In addition, the public and other stakeholders are encouraged to participate in the annual research planning process. The ARB has ensured that air pollution research is

coordinated with ongoing climate change and energy research via quarterly meetings with the CEC.

Nonetheless, California state agencies have recognized that such coordination can always be improved, and have already taken the following steps: (1) The Climate Action Team formed a Research Coordination Subgroup for sharing of information on climate- and energy-related research, development, demonstration, and deployment (R+DDD) projects in California. Charter members include ARB, Cal-EPA, Caltrans, CEC, CPUC, and Resources, and will eventually include all agencies that fund or are clients for R+DDD activities. The group began meeting informally on a monthly basis last fall and continues the 2-year coordination of research on the impacts of climate change that, in part, laid the foundation for the Global Warming Solutions Act of 2006 (AB 32). (2) The CAT Research Coordination Subgroup began work on an R+DDD "Roadmap" for California four months ago, and has engaged leading academics from the UC system, private universities, and the National Research Council to provide input. The Roadmap will identify legislative mandates and other policy drivers, ongoing activities, and remaining gaps. When completed later this year, the Roadmap will be reviewed by the public, the California Council on Science and Technology, and the appropriate Boards and Commissions. The ARB will use the Roadmap to ensure that its research funds are targeted on the most important areas that support AB 32 requirements. (3) As part of the Roadmap, ARB staff is preparing a catalog of all State, Federal and private sector funded climate change and energy related projects in California. This catalog, when complete, will help identify areas of overlapping interest, and will be updated annually.

Vehicular Air Pollution

AB 1493 (Chapter 200 Statutes of 2002) required the ARB to adopt regulations to reduce GHG pollution from vehicular sources. Those regulations were adopted, but have never been implemented due to disputes in the courts and with the US EPA over federal preemption and waivers. AB 32, at Health and safety Code Section 38590, requires the ARB to adopt regulations to "backfill" the AB 1493 regulations if they don't take effect. What actions has the ARB taken to "backfill" the AB 1493 emission reductions from vehicles?

15. This past month, ARB voted to modify its Zero Emission Vehicle (ZEV) Rule in a manner that some have characterized as weakening the rule. Please explain your vote in favor of the modifications. Given that cars are a major source of air pollution, and that the costs of reducing Pollution often fall disproportionately on stationary sources, why did the board take the action it did on the ZEV Rule?

The ARB voted to strengthen the ZEV regulation. The current requirement for the 2012-2014 timeframe remains 25,000 ZEVs. The Board's vote tripled the minimum requirement proposed by staff, confirming its commitment to aggressive ZEV technology development. Overall, the Board's modifications to the ZEV program will result in more than 65,000 near-zero and zero emission vehicles, a 60 percent increase over the existing program. Some have suggested that by reducing the minimum number of pure ZEVs required and allowing plug HEVs to backfill requirements, that the rule was weakened. That simply is not the case. Plug HEVs are electric vehicles with zero emissions for much of their operation. They are one of the technologies identified in the AB 1007 report prepared by ARB and CEC as a needed technology to meet the 2050 GHG reduction target. Because they are nearest to commercialization of the ZEV technologies, they have the ability to provide near term GHG and smog emission reductions.

The modifications to the ZEV program will result in an air quality benefit over the existing program for the 2012 to 2014 timeframe: 3,400 tons of criteria pollutants (NOx and VOC) reduced and 1.4 million tons of climate change (CO2) emissions reduced on a well to wheel basis. This benefit can be attributed to the number of plug-in electric vehicles (PHEV) now included under the modified program. Additionally, the modifications will result in \$3.2 billion of avoided costs to the auto manufacturers.

The overall goal of the ZEV program has not changed. The program continues to achieve air pollution reductions in order to reach the Board's health based standards. The ZEV program also will continue to promote the development and use of the cleanest technologies commercially available, while still requiring auto manufacturers to develop and produce zero emission vehicles. Also, the program continues to promote ZEV enabling technology, rewarding and commercializing evolutionary technologies that move California towards the end goal of zero vehicular emissions.

Air Quality Incentive Programs

16. The ARB oversees several bond funding programs for clean air, as well as the AB 118 program and the Carl Moyer program. How much funding is available annually for each of these programs? Does the board have a breakdown of how these funds are distributed geographically? Are the funds targeted to areas with the greatest non-attainment and public health problems?

ARB Incentive Programs

Program	Funding per Fiscal Year (in million \$)								
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015+
Prop 1B: Goods	\$250					\$750 ¹			

Movement Bond										
Low-Emission School Bus		\$200	\$0							
Carl Moyer Program	State	\$90	\$90	\$90	\$90	\$90	\$90	\$90	\$90	\$61
	AB 923 ²	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$0
AB 118		\$0	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$0

1. The amount of the \$750 million appropriated each year is determined annually by the Legislature.
2. AB 923 local \$2 MV fees may be spent on the Carl Moyer Program, Lower Emission School Bus Program, the Agricultural Assistance Program, or car scrap programs.

Proposition 1B – Goods Movement Emission Reduction Program: A total of \$1 billion is available to clean up diesel emissions from the freight industry, upon appropriation by the Legislature. This program targets cleaning up California's truck fleet – which will significantly reduce diesel particulate emissions in communities, plus regional ozone and particulate pollution. The Board established geographic funding targets based on freight emissions, population and State Implementation Plan needs in each trade corridor:

- LA/Inland Empire: \$550 million
- Central Valley: \$250 million
- Bay Area: \$140 million
- San Diego/Border: \$60 million

Proposition 1B – Lower-Emission School Bus Program: \$200 million in funding is available for FY 2007-08. The implementing legislation directs ARB to allocate funds to each region based on the distribution of the oldest buses:

- South Coast: \$70 million
- San Joaquin Valley: \$39 million
- Sacramento: \$9 million
- Bay Area: \$8 million
- Other: \$65 million

The Lower Emission School Bus Program will reduce exposure of school children to diesel PM emissions by replacing all of the pre-1977 school buses with new cleaner buses. The program will also replace about 1,000 of the 3,500 remaining 1977-1986 buses and retrofit up to 3,500 with particulate filters.

Carl Moyer Program: State Carl Moyer Program funds are distributed to air districts according to the formula in the implementing legislation (H&SC §44299.2(i)). South Coast's percentage of these funds is commensurate with its percentage of the State's population. Funds are distributed to all other air districts based upon each district's attainment status for federal air quality standards, particulate emissions, and historical

program funding (H&SC §44299.2(i)). Approximate annual State Carl Moyer Program funding by air district is:

- South Coast: \$34M
- Bay Area: \$11M
- San Joaquin Valley: \$11M
- ARB Multi-District: \$9M
- Sacramento Region: \$6M
- Other districts: \$17M

State law also requires that at least fifty percent of funds in the five largest air districts must be spent in environmental justice areas. (H&SC §43023.5)

Air Quality Improvement Program (AB 118): ARB is responsible for the \$50 million per year AQIP program. AQIP program guidelines are in the initial stages of development and shall be brought to the Board for its consideration in Spring, 2009. ARB will work with air districts and other interested stakeholders during guideline development to ensure funds are distributed in a way that best enables California to meet its air quality challenges.

Air Quality/Environmental Justice

Low-income communities often suffer from increased pollution burdens due to their locations and the industrial activities, truck traffic, or other activities that take place adjacent to them.

17. What steps do you support to reduce air pollution impacts in EJ communities? What specific assessment and mitigation tools does the ARB use so EJ communities do not continue to suffer disproportionately from air pollution?

ARB has committed to making the achievement of environmental justice an integral part of its activities. The Board has taken several important steps to ensure environmental justice is addressed as it works to improve air quality and public health throughout California. Notably, on December 13, 2001, the Board established the foundation for ARB's EJ program by approving the Environmental Justice Policies and Actions (Policies) which establishes the framework for incorporating environmental justice into ARB's programs consistent with the directives of State law. There are a number of specific actions to support each Policy.

The policies include the following:

- Integrate environmental justice into all of ARBs programs, policies and regulations
- Strengthen ARBs outreach and education efforts
- Work with local air districts to meet health-based air quality standards and reduce health risks from toxic air pollutants
- Strengthen enforcement activities at the community level
- Assess, consider, and reduce cumulative emissions, exposures, and health risks when developing and implementing our programs
- Work with local land use agencies, transportation agencies, and air districts to develop ways to assess, consider, and reduce cumulative emissions, exposures and health risks from air pollution through general plans, permitting, and other local actions
- Support research and data collection needed to reduce cumulative emissions, exposure, and health risks

While these Policies focus on ARB as an organization, they also reflect the need for the local air pollution control and air quality management districts (local air districts) and other local agencies to play their part. The local air districts are most directly responsible for the regulation of air pollution from businesses and industries in California. Local land-use agencies are directly responsible for the siting of new air pollution sources, and local air districts also play an important role by issuing permits for new sources of air pollution. ARB has committed to work in partnership with these agencies to improve the information that local agencies use to make planning and permitting decisions.

ARB has an aggressive program to control motor vehicle pollution, the principal source of air toxics and other emissions leading to the violation of clean air standards. For example, ARB approved the Emission Reduction Plan for Ports and Goods Movement which addresses environmental and community impacts from goods movement in California and identifies mitigation measures necessary for reducing those impacts. By working to improve siting and mitigation practices, and further controlling sources within ARB's jurisdiction, the Board is helping to address environmental justice issues at the community level throughout California.

AB 32 requires the establishment of an EJ Advisory Committee to assist the ARB in assessing the impacts of its regulations on EJ communities. It has been reported that the board has given no staff or funding to the EJ Advisory Committee, while it has provided significant resources to the

Economic and Technology Advancement Advisory Committee and to the Market Advisory Committee established by executive order.

18. Please describe the resources allocated to each advisory committee.

Environmental Justice Advisory Committee (EJAC or Committee): The EJAC was formed by ARB in advance of the timeline directed by AB 32. The main purpose for the EJAC is to advise ARB in its development of the Scoping Plan and any other pertinent matters in implementing AB 32.

The 10 Committee members were appointed by the Board at the January 2007 Board meeting. The Committee held five public meetings, March, May, October of 2007 and January and March of 2008. The EJAC discussed key issues ranging from Early Actions and the Low Carbon Fuel Standard to ARB's efforts to conduct non-economic analyses of the Scoping Plan's design.

ARB staff has provided support to the EJAC and will continue to do so. Staff activities include:

- Developing, maintaining and updating EJAC web pages
- Scheduling EJAC meetings
 - Developing consensus for date, time and location
 - Arranging and funding costs for member travel and meals (meals at 2 of 5 meetings)
 - Arranging for needed materials and supplies for meetings
- Arranging for facility usage at the Cal/EPA Headquarters Building
- Sending out public list serve notices of meetings and agendas
- Coordinating distribution of informational material and other materials with members
- Collecting recommendations/resolutions from the Committee for distribution to ARB staff
- Providing staff presentations and response to questions as requested by the Committee
- Arranging and conducting monthly meetings between EJAC co-chairs and ARB EJAC team to discuss direction and priorities

In summary, ARB has provided staff support of approximately 25-30% of a PY over the period of about a year (this includes staff and management support). This support will continue into the future as part of ARB's commitment under AB 32.

Economic and Technology Advancement Advisory Committee (ETAAC or Committee):

The ETAAC was formed by ARB as directed by AB 32. The twenty Committee members were appointed by the Board at the January 2007 Board meeting. The Committee held nine public meetings at several locations across California, and delivered its final report of recommendations at the Board's February 2008 Board meeting. Throughout this period, the Committee's activities were supported by staff from the ARB. Similar to the support provided to the EJAC, staff activities included:

- Develop, maintain and update ETAAC web pages
- Schedule ETAAC meetings
 - Includes developing consensus for date, time and location
 - Arrange for needed materials and supplies for meetings
- Provide summaries of related research funding and give presentations to the Committee
- Arrange for facility usage and support from Stanford University, University of California at Merced, South Coast Air Quality Management District, as well as at the Cal/EPA Headquarters Building
- Send out public list serve notices of meetings
- Coordinate distribution of public comments and other materials with members

In addition, staff reviewed and commented on the draft report, and arrange for a professional technical editor to produce the final report. ARB provided \$5,000 out of \$18,000 that was spent for the technical writer contract.

ARB provided staff support of approximately one PY over the period of about a year largely focused on the production of a final report (more than 300 pages) to advise the Board on activities that will facilitate investment in and implementation of technological research and development opportunities (HS 38591 (d)).

Market Advisory Committee (MAC): The MAC was created in December 2006 by Cal/EPA Secretary Linda Adams pursuant to Governor's Executive Order S-20-06. The Executive Order charged the Committee with developing recommendations for ARB's consideration on the design of a market-based compliance program to reduce GHG emissions. The recommendations were released in a June 2007 report to the Board and provide information that staff is considering along with other potential strategies for the Scoping Plan. Following the release of its report, the MAC ceased to exist.

The MAC was staffed by a Cal/EPA contractor. Although ARB actively tracked the Committee's activities, ARB staff support was quite limited, and included having staff observe monthly stakeholder and committee working group

meetings, responding to the Committee's request for technical information, and summarizing public comments for ARB management's information.

19. AB 32 also requires evaluation of market based compliance mechanisms for their impacts on EJ communities. Is the board conducting any such analysis? If so, please describe.

Prior to inclusion of market mechanisms in regulations implementing the AB 32 Scoping Plan, ARB must "1) consider the potential for direct, indirect, and cumulative emission impacts, including localized impacts in communities that are already adversely impacted by air pollution; 2) design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants; [and] 3) maximize additional environmental and economic benefits for California, as appropriate." This is in addition to AB 32's requirement that the Scoping Plan consider environmental and public health benefits, and the legal requirement to prepare a California Environmental Quality Act (CEQA) equivalent analysis.

ARB is assessing the impacts and benefits of the AB 32 Scoping Plan. First, ARB will examine the measures of the Scoping Plan at statewide and regional levels, both through economic modeling associated with Scoping Plan development and during measure development activities. The economic modeling can provide information on changes to income brackets and on changes to fuel pricing, which are key potential economic impacts to low-income communities. Second, Climate Action Team subgroups are being asked to identify the potential impacts of their measures on EJ communities, and this can be used to identify those measures most likely to have non-economic impacts or benefits. Based on this evaluation, ARB is exploring the data available to perform regional health analysis and is working with local Air Quality Management Districts to identify tools available to perform community level analysis.

On April 25, ARB will begin a stakeholder process to solicit feedback on its proposed impact analysis for emissions and air quality, including identification of additional tools and specific scenarios of concern. The methodologies and results of this impact analysis will be vetted in a public process, and will also be discussed with a subgroup of the Environmental Justice Advisory Committee created for this purpose. ARB is just now undertaking this process because of the need to first develop the components of the Scoping Plan that will be the subject of the analysis and to define the economic modeling that will be used to help identify alternatives and to support the emissions and air quality analysis.

AB 32 goes further to direct that the regulations adopted to implement the Scoping Plan be designed to maximize total benefits to California; to ensure that activities do not

disproportionately impact low-income communities, interfere with efforts to achieve and maintain State and Federal air quality standards or efforts to reduce toxic air contaminant emissions; and to consider overall societal benefits, including reductions in other air pollutants and other benefits to the environment and public health. One example of a regulation currently in the process of being developed is the Low Carbon Fuel Standard, for which ARB staff will complete the necessary analysis prior to Board consideration.

Supplemental Questions:

Two important standards of AB 32 are that regulations be cost-effective and technologically feasible in order to protect the California economy from loss of jobs and their associated emissions to other states and countries.

1a. What is the process you will rely on to make this crucial determination?

ARB is working to address this critical issue along two paths. First, ARB is working closely with the Climate Action Team (CAT) and its subgroups that are evaluating emission reduction measures that are available for different sectors of the California economy. The sector subgroups have provided insight into the emission reduction opportunities in each sector, identified measures that are technically feasible to achieve those reductions, and provided preliminary information on the costs associated with these measures. This work has built on the earlier efforts that resulted in the CAT report that was published in 2006, the updated macroeconomic analysis report from October 2007, and the early action effort where stakeholders identified a number of potential greenhouse gas mitigation strategies that the CAT agencies have considered. The sector teams have been working to provide information to their stakeholders on the work they have been doing for ARB as part of our implementation of AB 32.

In addition to the work of the State's technical experts, ARB is making use of Energy 2020, an integrated energy and emissions model of the North American economy that has been tailored for California, and E-DRAM, a financial model of the California economy that has been used in the economic analysis of regulations by ARB and other State agencies for more than a decade. The CPUC has also established a contract with E-3, an energy and environmental consulting firm, to provide more detailed modeling of the electricity and natural gas sectors. ARB and CPUC staffs have been closely coordinating their modeling efforts. This modeling work will provide important information on the interactions among the different measures being evaluated by the sector teams, on the relative costs of different combinations of direct regulations and market measures for implementing AB 32, and on impacts on key economic metrics.

ARB staff will take the information from the sector teams and from the modeling effort to evaluate the proposed measures. The evaluation will need to consider the timing and size of proposed emission reductions, the long-term and short-term costs, and a broad spectrum of other potential impacts (e.g., impacts on environmental justice communities, impacts on small business, impacts on consumers, impacts on emissions traditional air pollutants). The Scoping Plan will need to demonstrate how the State will meet AB 32's GHG emission reduction target, which will require an aggressive action across all sectors of California's economy. Selection of the mix of measures to implement AB 32, including possible inclusion of market measures, will be based on our ability to select a combination that helps meet the target while keeping the short-term and long-term costs as low as possible and providing the greatest benefits possible to the California economy.

Staff will present their initial evaluation of what approaches are cost-effective and technologically feasible in the Draft Scoping Plan, which will be released in late June. Stakeholders will have the opportunity to review and comment on staff's approach and evaluation. Staff will take the comments received into consideration while drafting the final Scoping Plan, which will be submitted to the Board for its consideration at the November 2008 meeting. This process will provide a robust evaluation for the Board's consideration as it makes the difficult policy decisions on how to implement AB 32.

2a. Who would you rely on to provide evaluation of these issues?

These evaluations are being conducted by ARB staff, with assistance from staff from other Climate Action Team agencies as appropriate. Staff is consulting with academic experts, government officials from other states, the federal government, and other countries, and with stakeholders from business, industry, and public interest groups. Staff develops cost estimates based on review of information from experts, industry literature, and the stakeholders themselves. These estimates are re-evaluated using peer reviewed financial and economic methodologies. After internal review of the cost estimates, ARB uses workshops to explain and solicit comments and views from the stakeholders to resolve any issues or correct any errors that may have occurred.

ARB has also initiated a contract with the University of California to provide a peer review of ARB's use of Energy 2020 and E-DRAM. As noted above, staff's work on these issues will be the subject of a public review process, including public workshops and written comments, prior to submitting the final Scoping Plan to the Board for its consideration at the November 2008 meeting. This process is one that staff has successfully used to iron out differences with stakeholders on cost estimates for other major regulations. I fully expect this process to provide a robust assessment of staff's evaluations prior to the Board's consideration of the Scoping Plan.

Innovation and technological advancement will be vital for the state to achieve a meaningful reduction of greenhouse gases, as established by the 2050 goal of 80% reduction from 1990 levels.

3a. How large of a role will ARB regulations play in this arena?

4a. What role does the market play in encouraging industries to innovate and adopt new technologies?

I am taking the liberty of answering these two questions together, since I believe the answers are very similar.

ARB has long played a major role in promoting technological innovation through its traditional air quality regulatory role, and I expect we will continue to do so in the greenhouse gas emissions context. ARB's role in this arena includes setting the rules of the game, providing certainty for long-term GHG emission reduction requirements, and establishing clear expectations of rigorous enforcement. These actions can help create a stable market for ideas and innovation that will provide rewards for those who innovate. Whether the regulations take traditional command and control approaches or encompass market measures such as a cap-and-trade system, ARB is committed to reducing the State's GHG emissions to 1990 levels and, more importantly in terms of encouraging innovation and technical advancement, continuing those reductions in the decades beyond 2020. This commitment provides the long-term certainty that innovators need to develop and bring to market the low-carbon technologies that will be essential to address the climate change challenge facing the world.

Well designed market mechanisms can be an important part of that long-term commitment. For example, a cap-and-trade system with a firm declining cap ensures that GHG emissions will be more costly over time, providing a clear signal to those making investment decisions that low-carbon technologies will be cost-effective in the long-term. Moreover, a cap-and-trade approach provides a financial reward for reductions that go beyond those required by performance standards. Some have claimed that existing cap-and-trade systems have had little effect in terms of encouraging innovation. However, the examples put forward for this argument, such as the federal acid rain program, lacked a stringent declining cap. For the world to address climate change successfully, California and our counterparts throughout the world will need to continuously reduce emission levels throughout this century.

In short, there is not an either/or trade-off involved between direct regulations and market approaches for encouraging innovation and investment in new technologies.

Ms. Sabelhaus
May 29, 2008
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Either approach, or a combination, will provide the needed signals if accompanied by a clear long-term commitment to continued emission reductions for decades to come. ARB has that commitment.

Thank you again for the opportunity to respond to your questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary D. Nichols". The signature is fluid and cursive, with the first name "Mary" being more prominent.

Mary D. Nichols

cc: The Honorable Don Perata, Chair
Senate Rules Committee
State Capitol, Room 205
Sacramento, Ca 95814

The Honorable Jim Battin, Vice Chair
Senate Rules Committee
State Capitol, Room 3060
Sacramento, Ca 95814

The Honorable Gil Cedillo
Senate Rules Committee
State Capitol, Room 5100
Sacramento, Ca 95814

The Honorable Bob Dutton
Senate Rules Committee
State Capitol, Room 5094
Sacramento, Ca 95814

The Honorable Alex Padilla
Senate Rules Committee
State Capitol, Room 4032
Sacramento, Ca 95814

Responses to Questions From the Senate Rules Committee In Consideration of the Appointment of Joseph K. Lyou, Ph.D., to the Governing Board of the South Coast Air Quality Management District

April 4, 2008

1(a). What do you hope to accomplish during your tenure as a member of the South Coast Air Quality Management District Board? What goals do you have for the board, and how will you accomplish them?

As a member of the South Coast Air Quality Management District Governing Board, I am committed to the fulfillment of the agency's mission:

The South Coast AQMD believes all residents have a right to live and work in an environment of clean air and is committed to undertaking all necessary steps to protect public health from air pollution with sensitivity to the impacts of its actions on the community and businesses.¹

If confirmed, my term as a member of the South Coast AQMD Governing Board will expire on January 11, 2011. I hope to have the privilege of serving more than one term and that my tenure on the Governing Board will allow me to achieve my specific goals. My goals include:

1. the attainment of the federal air quality standard for fine particulate matter (PM 2.5) by 2015;
2. the attainment of the federal 8-hour ozone air quality standard by 2024;
3. a 50% reduction in the emission of toxic air contaminants within 10 years;
4. the creation of a policy within 2 years that requires South Coast AQMD to use penalty and settlement funds primarily to mitigate the adverse air quality and public health impacts caused by the alleged violation;
5. the adoption of a community complaint resolution protocol within 3 years; and
6. the adoption of cumulative environmental impact policies by 2015 that address decisions about permitting, enforcement activities, and rulemaking.

My 18-year professional career has been dedicated to the achievement of environmental justice and the improvement of public health in California. My goals as a Governing Board member are consistent with these career objectives. I am thankful to be in a position to set and work toward the achievement of these goals.

I will work to achieve these goals through my participation in Governing Board and committee meetings, through interactions with staff and stakeholders, and by fostering respectful, productive, and mutually beneficial relationships with the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (ARB), and other agencies with the authority and responsibility to reduce air pollution emissions within the South Coast Air Basin.

¹ South Coast Air Quality Management District, 2008, *South Coast Air Quality Management District Goals/Objectives for FY 2008-09*.

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Appointment

1(b). How should we measure your success?

The State of California Senate should measure my success by whether I achieve my goals within the timelines I have identified. In addition, I encourage you to review my voting record, attendance and participation at Governing Board and committee meetings, and participation in workshops, conferences, meetings, and public hearings hosted by others. You will find that I take my Governing Board membership responsibilities very seriously, pay close attention to the issues we consider, work hard to have a positive influence upon our policies and operations, and treat my colleagues, staff, and stakeholders fairly and with respect.

2(a). Will the proposals in the draft San Pedro Bay Ports Clean Air Action Plan provide for the required reductions?

If implemented fully and aggressively, the San Pedro Bay Ports Clean Air Action Plan will achieve significant air pollution emission reductions. The importance of this commitment should be acknowledged and commended. The plan as adopted, however, lacks the specificity of commitments necessary to guarantee that it will reduce criteria air pollutants sufficiently to meet state and federal criteria pollutant standards or to protect the public from the adverse health impacts resulting from exposure to toxic air contaminants associated with port activities. The ports still need to make many important implementation decisions, including the adoption of project-level approval conditions, the negotiation of lease agreement requirements, and the adoption of port-wide policies such as equipment and clean fuel standards not covered by project-level conditions or lease agreement amendments and renewals. Thus, the success of the plan will depend upon many unresolved details. The most important unresolved detail is the ports' commitment to adopt port-wide standards that will result in the reduction of their "fair share" of port pollution emissions needed to comply with state and federal air quality regulations.

2(b). If not, what other steps need to be taken?

In order to meet air quality standards at the ports and within the South Coast Air Basin, the ports must look beyond the 5-year program identified in the Clean Air Action Plan. Securing adequate funding will be crucial.

The South Coast AQMD Governing Board plans to adopt so-called "backstop" regulatory measures this year to assure that the emission reductions called for in the plan occur even if the ports fail to fulfill their commitments in a timely manner. The adoption of these standards will provide greater certainty and confidence that the voluntary aspects of the plan will be backed up by South Coast AQMD with enforceable regulatory requirements.

We must also work to assure that the federal government addresses emission sources under its control. For example, only the federal government can adopt emission reduction standards for locomotives. Federal law substantially restricts the ability of state and local government agencies to address this problem. U.S. EPA has just adopted new locomotive standards, however, they will not achieve the emission reductions we need prior to the 2015 deadline for complying with the PM 2.5 annual standard within the South Coast Air Basin.

3. Do you believe that the draft San Pedro Bay Ports Clean Air Action Plan provides sufficient reduction in the two ports' emissions to comply with federal law and protect the health of the area's residents?

Please see my responses to Questions 2(a) and 2(b). In sum, the crux of the matter rests with implementation issues that the ports have yet to decide. In addition, achieving federal standards and fully protecting public health will require commitments that reach past the 5-year timetable in the plan. Some control measures such as building a zero or near zero emission cargo transport system will need to be developed and implemented over a longer timeframe. The ports will have to update the plan to address such technologies to have any hope of achieving the necessary long-term emission reductions.

4. Do you believe the differing proposals to clean up diesel trucks by the ports will reduce pollution sufficiently? Is the proposal by one of the ports better than the other? If so, which proposal would better reduce pollution?

The primary difference between the two proposals is the employment status of the estimated 16,500 drayage truck drivers serving the ports. The Port of Los Angeles adopted a policy that requires trucking and shipping companies to hire truckers using port property as employees. In February 2008, the Port of Long Beach adopted a policy that allows trucking and shipping companies to continue to rely upon independent truckers, employee truckers, or a combination of both. This issue has become highly controversial because of the potential labor-management and air quality ramifications.

While both of the proposals include elements necessary to clean up diesel truck emissions, I believe the policy adopted by the Port of Long Beach will be less likely to succeed because it fails to address the underlying economic structural issues responsible for the reliance upon older, highly polluting, and mechanically unsafe drayage truck fleets. Their policy puts the burden on low-wage independent drivers who cannot afford health insurance, let alone the expense of maintaining their trucks in clean and good working condition. Even with the availability of incentive funding, we cannot expect low-income drivers to maintain and operate new, clean equipment worth up to five times their annual earnings.

The goals of both plans include the turnover of older trucks to 2007 or later models by 2012, and for 50% of the trucks to run on alternative fuels. If successful, the plans will result in more than an 80% reduction in truck-related diesel exhaust at the ports. Despite this drastic reduction, additional measures will be necessary to reduce the emission of oxides of nitrogen (NOx) from diesel trucks in order to attain state and federal air quality standards. The ports and South Coast AQMD have embarked upon a demonstration project for electric drayage truck technology that could virtually eliminate pollution emissions for trucks moving cargo to near-dock rail yards. Such programs must be supported and implemented as rapidly as possible if we are to comply with air quality standards and protect public health.

5. If emission sources cannot be reduced enough to protect the health of adjacent neighborhoods, what other recommendations should the board make to curb the adverse effects of air pollution caused by goods movement?

South Coast AQMD should assist in planning and advocating for a comprehensive long-term vision for a cargo transport system that will ensure a viable goods movement infrastructure and

health protective measures to minimize, if not eliminate, the impacts of the ports on nearby communities. Elements of such a program should include zero or near zero emission technologies such as rail electrification, getting as many containers as possible off the highways and onto low or zero emission rail, and the siting of infrastructure (e.g., rail yards and warehouses) in locations that make sense. For example, diesel cargo handling equipment (which should be phased out where possible) and facilities that attract diesel trucks should be located away from residential areas, parks, hospitals, and schools. In addition, new warehouse development, which is expected to be substantial, should be sited near low or zero emission rail facilities to minimize the reliance upon diesel trucks.

South Coast AQMD should listen to those who live and work in the impacted communities and develop programs that address their concerns and needs. The community members I've worked with who live in the port-adjacent neighborhood of Wilmington have called for diagnostic and service-oriented health care programs. They support the levying of container fees to mitigate, remediate, and prevent environmental impacts associated with goods movement activities. They have asked decision-makers to prioritize public health protections over other considerations. They seek economic cost-benefit analyses that assess port impacts upon health, pollution, traffic, and other quality of life issues. They would like to see better land use decisions to prevent new problems and the initiation of the long process of developing remedies for existing incompatible land use patterns. I believe that these are reasonable requests that should be supported to help address the adverse effects of air pollution caused by our goods movement infrastructure.

6. What do the projections of increased goods movements at the two ports mean for the area's air quality?

Port officials estimate that the volume of international cargo moving through the ports will almost triple by 2030. This enormous growth means that, while the emissions trend for virtually every other source category shows air quality gains, goods movement sources (e.g., marine vessels and aircraft) will be practically the only source categories where pollution emissions will be increasing. We can expect the associated public health impacts to increase accordingly, which means that we will be confronting premature deaths, increased asthma incidences, heart disease, and other ailments. These air pollution impacts will stretch from Wilmington, Carson, and Long Beach to Commerce, Riverside, Mira Loma, and beyond. The projected growth in the goods movement industry demands quick and decisive action to prevent the exacerbation of what is already considered to be a public health crisis.

7. Given the recent Ninth U.S. Circuit Court of Appeals decision, what do you believe your board should do to address pollution from oceangoing ships?

South Coast AQMD must support the effort of the ports to use their authority as landlords of terminal operators to include mitigation measures in port project approvals and leases, and to adopt port-wide policies to reduce air pollution impacts. A separate court case, the legal challenge to the South Coast AQMD fleet rules, established that government entities have the same rights as others to act as they wish in their business decisions (i.e., purchasing and contracting), even if they are otherwise preempted by federal law from restricting emissions from certain sources. Therefore, should the ports fail to use their project approvals, leases, and policy-making authority to secure the promised air pollution benefits, I believe that South Coast AQMD can and should require them to do so through the adoption of backstop regulations.

South Coast AQMD should also advocate for revised state rules to the degree such regulations are legally feasible and for federal and international standards.

8. How effective has the RECLAIM program been?

The South Coast AQMD adopted the Regional Clean Air Incentives Market (RECLAIM) program in 1993, with the intent of providing a more flexible compliance policy for the largest stationary sources of NO_x and sulfur oxide (SO_x) pollution. Most people agree that RECLAIM has had, at best, a mixed record of accomplishment. The program has resulted in reduced compliance costs for large industries operating within the South Coast Air Basin and appears, in more recent years, to have met its NO_x and SO_x emission reduction goals. South Coast AQMD, however, has been widely criticized for over-allocating credits at the onset of the program, which resulted in an unnecessary delay in emission reductions, failing to charge fees to polluters when making the initial allocation of credits, neglecting to monitor and track trades in a manner that would assure the legitimacy of the credit exchanges, failing to settle violations in a timely manner, being unable to prevent at least one broker from defrauding companies through the falsification of trade-related documents, stifling innovation and public participation in environmental decisions, intervening in the market in ways that encourage polluters to seek rule changes as a preferable alternative to investing in new emission control technologies, and exacerbating environmental justice (i.e., "toxic hot spot") problems by allowing the further concentration of pollution sources within communities of color and low-income neighborhoods.²

The U.S. EPA Clean Air Markets Division staff has produced what I believe to be the most objective and clearly written analysis of the RECLAIM program.³ Their report includes an explanation of the RECLAIM program, a historical review, a summary of the air quality results, and a review of the issues raised by RECLAIM critics. In their assessment, they conclude, "Ozone air quality in the LA Basin is improving, but it is not clear how much is due to RECLAIM, and the region still has a long way to go to achieve healthy air."⁴

9. How did you vote on the adoption of the district rules to increase allocations for new and existing power plants? Please explain why you voted the way you did.

I voted against the adoption of Proposed Amended Rule 1309.1 and Proposed Rule 1315, which had the effect of increasing pollution credit allocations for new and existing power plants. After reading and carefully considering the project documents and proposed regulatory language, and after listening to about 12 hours of public testimony, I had identified many serious concerns with the proposal being considered by the Governing Board. First, the rule changes would result in enormous increases in PM 2.5 and greenhouse gas air pollution emissions. Second, I could not find any evidence in the administrative record that demonstrated a need for the agency to make these credits available from the "Priority Reserve," a special account of

² See, for example, Moore, C. A., 2004, *RECLAIM: Southern California's Failed Experiment With Air Pollution Trading*, and Drury, R. T., et al., 1999, "Pollution Trading and Environmental Injustice: Los Angeles' Failed Experiment in Air Quality Policy," *Duke Environmental Law & Policy Reform*, Vol. 9, pp. 231-289.

³ U.S. Environmental Protection Agency, Clean Air Markets Division, Staff Paper, 2006, "An Overview of the Regional Clean Air Incentives Market (RECLAIM)."

⁴ *Ibid.*, p. 25.

credits originally intended to allow for the unimpeded construction and operation of hospitals, fire stations, police stations, schools, and other highly valued public service entities. To the contrary, public testimony from a representative from the California Independent System Operators (Cal-ISO) and a careful review of the method staff relied upon to calculate future electricity needs indicated that there is no short-term need for the construction of new and the expansion of existing power plants. Third, I was concerned that the legal findings being adopted under the California Environmental Quality Act (CEQA) included language about the future consideration of renewable energy alternatives that contradicted the actual rule language. Fourth, I thought the adoption of Rule 1309.1 unfairly penalized companies and investors pursuing renewable power generation projects and technologies. Fifth, I believe that price increases for PM 2.5 offsets under the New Source Review program are a fundamental feature of how such market-based policies are supposed to work, and that agency intervention in the market must be done only under extraordinary circumstances. Making mid-stream policy changes such as amending Rule 1309.1 and adopting Rule 1315 undermine the integrity of the offset program and send the message to polluters that it is easier to seek relief through appeals to the Governing Board than it is to invest in pollution control technologies. Sixth and finally, I didn't believe that the proposed amendments to Rule 1309.1 adequately addressed the environmental justice impacts of the new and expanded power plants. Nearly all of the power plants planning to use the pollution credits made available through the amendments to Rule 1309.1 are located in communities of color and low-income neighborhoods.

10(a). How effective is the remote sensing program for vehicles?

Remote sensing technology has significantly progressed over the last decade and now appears able to identify gross emitting engines with a sufficient degree of certainty. Test programs for the use of this technology have been conducted for locomotives, heavy-duty trucks, passenger cars, and small trucks. The main issue relative to remote sensing as a air quality control strategy has been the costs of repairing or replacing vehicles and whether such programs should be voluntary or mandatory. Most programs for passenger cars to date have been of a voluntary nature and consumers have shown a reluctance to have their vehicles repaired under these circumstances. Gaining consumer confidence that repairs will be properly conducted remains a significant obstacle to any voluntary remote sensing and repair program. Remote sensing for highly polluting vehicles raises some important environmental justice issues. One the one hand, the owners of older highly polluting vehicles are less likely to be able to afford to pay for the needed repairs not covered by financial assistance programs. On the other hand, the localized pollution impacts from these vehicles are most likely to take place in the low-income neighborhoods and communities of color already confronting our most serious environmental problems. We must be sensitive to these issues and assure that financial assistant programs have sufficient funding and operate effectively. In the end, remote sensing will be cost effective and useful in future years for emissions inventory purposes and for identifying high-emitting vehicles.

10(b). What other things can be done to decrease pollution from vehicles?

Regulatory agencies can achieve vehicle emission reductions through the adoption of more stringent new vehicle emission standards, funding or requiring the use of retrofit pollution control devices such as diesel particulate filters, supporting the development of lower polluting fuels, and working to expedite the retirement of older, high-emitting vehicles. South Coast AQMD has limited authority to address mobile source air pollution problems. State and federal agencies

must exercise their authority and fund incentive programs to reduce pollution from vehicles. South Coast AQMD can assist by supporting technology development efforts, working with state and federal agencies, and helping to educate consumers so that they can make informed choices about the air quality impacts of the vehicles they drive.

11. What strategies are being considered by the board to deal with these [indirect and area-wide] sources of air pollution?

Because the South Coast AQMD region has the worst air quality in the nation, we do not have the luxury of ignoring any source of air pollution. Current studies show that we must continue to enact cutting-edge measures for stationary sources and support the adoption of effective mobile source and consumer product measures by U.S. EPA and ARB.

Indirect sources of air pollution are stationary sources such as buildings, facilities, and other structures that generate or attract car, truck, plane, train, or ship traffic and their associated mobile source pollution emissions. In its *2007 Air Quality Management Plan*, the South Coast AQMD Governing Board committed to adopting two types of indirect source rules, one set focused on port emissions (i.e., the Clean Air Action Plan backstop measures) and another for on-road and off-road mobile sources associated with new and redevelopment activities where proponents must seek project approval under CEQA. The latter proposal currently calls for indirect source emission reductions to be considered as a CEQA mitigation measure along with other mitigation options.⁵ Staff worked extensively with stakeholders on the development of this proposal and succeeded in getting industry and environmental groups to support this approach.

Area-wide sources of pollution are those that individually emit small amounts of air pollution but, when considered cumulatively, they add up to be significant contributors to our air quality problems. The South Coast AQMD has adopted a variety of area-wide source rules, including restrictions on dry cleaners, gasoline stations, stationary diesel engines, paints, and residential water heaters. In March 2008, we unanimously adopted restrictions on the use and installation of wood-burning fireplaces in order to comply with federal air quality standards and reduce particulate matter emissions during peak exposure months. The Governing Board adopted this rule at the urging of ARB and based on the legal requirement to adopt "all feasible measures" to reduce air pollution in our region. Other California air districts had established the feasibility of fireplace restrictions through their adoption of similar regulations.

South Coast AQMD will continue to target area-wide sources within our legal jurisdiction. At least three area-wide source issues are on the South Coast AQMD rulemaking calendar for 2008. While regulatory action by ARB may make it unnecessary to move forward with these regulations, current plans call for new or amended rules to address air pollution emissions from paint thinners, cutback asphalt, and the use of cleaning products at institutional and commercial facilities.

12. Do you believe the board should look at land-use decisions that contribute to these types of air pollution?

Local air districts should work with cities and counties to address the adverse air quality impacts associated with certain land use decisions. I want to make it clear that I support the

⁵ See, South Coast AQMD, 2007, *Proposed Modifications to the Draft Air Quality Management Plan*, p. VI-44.

longstanding policy of vesting land use and planning decision-making authority in cities and counties.⁶ I also believe, however, that air quality agencies haven't been as effective as they should be in making sure those cities and counties understand the public health and air quality problems associated with many land use and planning decisions. Often, simple measures such as switching the locations of a planned parking lot and school building can result in tremendous reductions in exposure to air pollution from nearby sources such as freeways and heavily traveled roadways.

Prior to my appointment to the South Coast AQMD Governing Board, I spent several years in meetings, negotiations, and debates with ARB staff, members of the California Air Pollution Control Officers Association, and other stakeholders in order to create air quality and land use guidance documents for California's cities and counties. I was actively involved in the development and adoption of the ARB *Air Quality and Land Use Handbook* (2005) and the South Coast AQMD *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning* (2005). In addition, I worked with the Governor's Office of Planning and Research to incorporate air quality related environmental justice recommendations into the 2003 *State of California General Plan Guidelines*. These guidance documents have helped educate local land use decision-makers about air quality issues. South Coast AQMD can further assist local government officials through comments on CEQA documents and by providing technical assistance and information to cities and counties within the South Coast Air Basin.

⁶ State law explicitly prohibits South Coast AQMD from assuming any authority over land use and planning decisions. "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." (Cal. Health & Safety Code §40414)

Answers

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission? How will you measure your success at meeting these goals?*

My goal as Commissioner is to continue to monitor Post's strategic plan and to make sure it is implemented. POST staff has adapted a strategic plan that is revised and updated every two years. My primary goal is to improve the quality and impact of training. As a POST Instructor, I believe this is the foundation of having the most qualified and well trained peace officers in California.

2. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*

In April of 2006, POST authorized a "Recruitment and Retention, Best Practices Update Manual." In this manual, POST describes a snapshot of current and projected changes in population demographics in addition to the implications these changes may have for Law Enforcement. The POST manual provides survey results of Academy Recruits to determine where they had difficulty in the selection process, what led them to choose a specific agency for employment. POST also held a Recruitment Symposium in 2001 and we have listed the survey results from that symposium.

As for the second part of this question, I would say yes. It appears possible recruits are being more selective in where they work and what benefits each agency has to offer. We no longer get a candidate list of 100 or more. The competition has greatly increased and each agency has to spell out why the prospective candidate would choose our city over a competitors.

3. *The commission's 2006 strategic plan said it was considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

Most goals and objectives under this strategic plan are in progress. Based on POST staff recommendations, the Commission opted to delete consideration of raising the entry level qualifications. This was based on studies that said this plan would considerably hurt recruitment amongst law enforcement agencies.

4. *Are efforts underway to diversify law enforcement agencies? If so, please describe.*

Post has no direct role in the hiring decisions made by law enforcement agencies. POST does, however, help agencies to improve recruitment efforts within the

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law enforcement community. POST has conducted surveys in 2000, 2005 and 2007 to address this.

5. *What steps have you taken to comply with this ruling? What is the status of those efforts?*

In January 2008, POST issued instructions to all agencies to download a roster containing the names of officers covered by the court decision and indicate the names of officers to be protected from disclosure due to safety or security reasons.

6. *Please describe the commission's progress toward meeting these requirements.*

POST has designed an 8 hour course that meets the requirements of PC section 13519.6. Certified presenters of the course are the Simon Wiesenthal Museum of Tolerance. Additionally, POST has developed a comprehensive "Hate Crimes Policy Guidelines" Manual. It contains a guide for agency's to develop the foundation for each agencies hate crime policy.

7. *What steps have you taken to help departments weed out potentially subpar employees before they are hired? What sort of training is available on this topic?*

Several POST manuals are being developed and are in the process of being completed. POST staff has 11 selection programs and projects underway which include 6 major on-going programs and 4 new development projects or studies that are driven by POST's Strategic Plan.

8. *What progress have you made toward this goal?*

As of April 2008, POST staff has developed and implemented the Learning Portal (launched '05) and 8 learning portal workshops. 5 are currently in development.

**California Commission on Teacher Credentialing (CCTC)
Senate Rules Committee Confirmation Question Responses**

Ting L. Sun

1. Please provide a brief statement of goals that you hope to accomplish while serving at a member of CTC.

My desire to serve on the CTC springs from my deep interest in and respect for the teaching profession and the importance of ensuring that we have the highest quality teachers in our schools. I have, therefore, three major goals:

- a) Ensure that the process by which teachers are trained consist of good balance between content knowledge and pedagogical skills to serve diverse learners: California's rigorous, standards-based curriculum requires that our teachers have deep content knowledge. This means that our teachers must not only have strong academic knowledge, but they must know the subject well enough to deconstruct the information down in such a way to make it accessible to all types of students. Pedagogical skill comes from both understanding the topic and understanding the learner. The art of teaching comes from the convergence of both. We must ensure that teacher preparation programs and our system for licensure are sensitive to this balance.
- b) Ensure that there is flexibility and multiple entry ways into the teaching profession to recruit and attract a broad-based number of motivated and dedicated individuals: The types of qualified people who wish to enter the teaching profession today are very different than those we have seen in the past. No longer is the profile, young college graduates who have decided to enter teaching as their first profession, but rather, there is an increasing number of more mature, second-career seekers who want to come into teaching as a way to serve their community. Our current system of university, coursework-based training is not meeting the needs of many who would make excellent teachers, and in some instances, serving as barriers for knowledgeable and skilled people and professionals in other industries to enter into teaching. Therefore, it is critical that we have multiple entry ways into the profession that adhere to rigorous standards. This allows us to cast a "wider net" for pulling in diverse individuals into the field of education.
- c) Ensure policy decisions best serve California's students' needs: My background and experiences (see response to Question 2) will add to the Commission's policy conversations by bringing a strong "field" perspective to the discussions. I have worked with California's diverse student population first hand, and I have worked closely with schools that serve diverse student populations. I also know the impact that policy decisions can have (both positively and negatively) on how we serve students. While

Senate Rules Committee

CTC's work is primarily around the preparation and training of *teachers*, I think we must always ask ourselves if our decisions are "doing right" by *students*.

2. *Please describe why you are qualified to serve on CTC.*

I have spent my professional career of over twenty years working in and with educational programs in a variety of diverse environments - including the start-up and implementation of a successful charter school, educational reform and research at the university, policy development and grant program management at the California Department of Education, and quality program management and leadership development as Vice President of Leadership and Quality in the California Charter Schools Association, and now managing and conducting school quality reviews as a consultant for Cambridge Education, an international education consulting company. In addition to these experiences, I received a Masters in Education and a teaching credential from Stanford University and my doctorate in education from UC Davis. As a classroom teacher, I worked closely with the CRESS Center as a Teacher Researcher and as a Teacher Consultant for the Area 3 Writing Project. My research at UC Davis focused on teacher development and training in the context of school reform. I hold a California Teaching credential and an administrative services credential.

I have had extensive experience in leadership, planning, and management responsibilities in a variety of settings which offer academic support for students and professional support and development for teaching staff, and I thrive on the challenge of developing and implementing initiatives that serve students and support their academic and social success. Moreover, I am passionate about the teaching profession and potential impact that teachers can have on their individual students and as well as on the quality education for all students.

I believe the very practical, hands-on experience I have had in teaching and curriculum development, working with students with diverse backgrounds and skills, research at the university level, and management of educational programs gives me a well-balanced perspective to inform and serve the Commission. Additionally my policy work through CDE and experiences in serving on other state and local boards/advisory panels places me in a unique position to blend my field experience with the functions of a policy body.

3. *Please provide a brief assessment of the challenges that you think face California's teacher credentialing system and what, if any recommendations you would make to improve the system.*

The greatest challenge facing the teacher credentialing system is, no doubt, ensuring that our teachers are prepared for and continuously trained to meet the diverse learning needs of California's students. Because of this, I see two key challenges we face today:

- a) Rigorous preparation for teachers to work with traditionally underperforming student populations such as special education, English Learners and socio-economically disadvantaged students.

- b) Attracting and retaining skilled, knowledgeable and committed individuals in the profession of teaching AND who reflect (ethnically and culturally) California's diverse student population.

The recommendations I would make for addressing these challenges are related to the goals outlined in Question #1. The preparation of teachers not just to teach, but to teach to the diverse learning needs of students is critical. Research shows that solid content knowledge gives the teacher a "leg up" to understanding how to take the information apart and to reshape in a variety of ways to impact student's learning. This, balanced with understanding how children learn and research-based techniques for working with struggling learners are keys to closing the "achievement gap." Our standards for all teacher preparation programs for specific content areas address these expectations, and I would recommend that CTC conduct the on-site monitoring of teacher preparation programs and its collection of evidence to focus on this area.

I believe that the second goal I outlined in Question #1 would assist with attracting and retaining skilled, knowledgeable and committed individuals in the profession of teaching and who also reflect the ethnically and culturally diverse students of California. Though we need to make sure that our teacher preparation programs meet high standards, I also believe there are many programs that can be created to both meet those standards and provide flexibility and multiple entry ways into the teaching profession. Though these (i.e. district intern programs and the paraprofessional program) exist and are growing, more can be done to promote and support these types of programs both financially and programmatically.

4. *Has the Commission been engaged in the ongoing statewide dialogue addressing the achievement gap? If so, please describe and provide examples.*

California's achievement gap is continuously addressed in Commission discussions, whether these are related to establishing standards for teacher preparation or induction programs or to setting test rates. Additionally, the Commission is regularly presented reports by university researchers on trends related to teacher programs, the types of people these programs are attracting, and where and with what types of students these teachers are placed. Within these contexts, questions are always asked about the relevance to all types of learners – especially those who are struggling. In a recent CTC meeting, for example, a researcher presented her findings on the pros and cons of recruiting teachers from overseas, where they come from and areas of concern. One of the preliminary findings is that a large proportion of these overseas teachers were being recruited to high needs districts. While content knowledge seems to be good among these teachers in general, there were concerns around how well they manage and work with diverse student populations. Cultural and language differences was cited as a challenge and so concern was raised on whether bringing overseas teachers to high needs districts was a good practice. The implications, I believe, for the Commission are for us to be careful in balancing our policies around content knowledge (as demonstrated on subject-matter teacher examines) and understanding of learners.

5. *The California Standards for the Teaching Profession were adopted in 1997. Given the state's achievement gap, do you believe the standards serve California well, or is it time to revisit the standards?*

The Commission is very conscientious about the need to prepare teachers with the skills necessary to address the needs of all types of learners. I believe that the California Standards for the Teaching Profession (CSTP) provides a balanced set of standards and expectations for what is considered as “quality” teaching to that end. Though the standards may need a review, I believe they are comprehensive and thorough. What we (the state, districts and schools) have not been diligent in doing, however, is making teachers formally accountable to those standards once they have moved beyond preservice training and induction. Not enough teacher evaluation systems are aligned to those standards, and not enough professional discussions occur among school administrators and among teachers related to what those standards mean and what they look like in the classroom. A focus on quality instruction and learning results must permeate the entire teacher career lifecycle. In my opinion, it's not the CSTP themselves, but our follow-through and accountability to those standards that we need to assess.

6. *What is the purpose of the CTC accreditation system, and how do you determine whether the proper systems are in place to support this purpose?*

The purpose of the CTC accreditation system is to ensure that educator preparation programs are 1) accountable and responsive to the educational needs of students, 2) high quality and effective for serving the needs of California's diverse student population, 3) adhering to program standards for professional service approved by the Commission (which are aligned to state K-12 Content Standards), and 4) continuously working to improve the quality of their program delivery.

To that end, the Commission has infused its accreditation system with several key features to ensure accountability: 1) an ongoing and continuous data collection (quantitative and qualitative) process, 2) annual reporting to and feedback from the Commission to teacher preparation programs, and 3) a seven-year cycle of activities which include a site visit, data analysis and in-depth interviews of graduates, candidates, employers, and program faculty and administrators. These components appropriately support the purposes on accreditation in that they require ongoing broad evidence collection by the educator preparation programs to meet the Commission's common standards and as well as standards for appropriate K-12 academic preparation. The features are focused on results (i.e. the performance of their teacher graduates) and require more rigorous and continuous monitoring of these programs by the CTC and regular dialogue with the Commission and the Committee on Accreditation (COA).

7. *What is CTC doing to increase the accountability of its accreditation system?*

As mentioned in the earlier question, the CTC has carefully revamped its former accreditation and monitoring system to align with standards it developed under SB 2042 (Chapter 548, Statutes of 1998) and to be more rigorous, evidence-based and results-oriented. To ensure

accountability to those standards, the CTC accreditation system requires teacher preparation programs (through a cycle of biennial reports, program assessments, and a site visit) to provide data on candidate competence. The accreditation system also provides for regular ongoing reporting and communication to the CTC that are related to program improvements and changes. Moreover, the Committee on Accreditation (COA), consisting of individuals well-recognized in their field of expertise and appointed by the Commission, is charged to monitor and oversee the accreditation system and make determinations as to whether the educator preparation program meets the Commission Common Standards and Program Standards for specific fields.

CTC has taken several steps to increase the accountability of as well as accountability to its accreditation system. The *Accreditation Framework for Educator Preparation in California*, adopted by the Commission in December 2007 outlines the Commission's policies on the accreditation system. The standards and processes for accreditation are made transparent through the CTC website, and CTC staff provide technical assistance and training to all institutions under the system. Further, the accreditation status and accreditation reports on educator preparation programs are publicly accessible through the CTC website.

8. *What is the status of CTC's accreditation process? Is there a backlog of programs requiring review?*

The CTC revised accreditation process is now in place and fully operating. Site-visits under the new accreditation system began in the 2007-2008 school year. All programs are now included in the seven-year accreditation cycle and are in various stages of reporting within that cycle. While there originally had been a backlog when the system was being revamped and the standards were being revised, that has worked itself out, and there is no longer a "backlog" of programs requiring reviews.

9. *What steps has the commission taken to assist universities and local education agencies to address impending teacher shortages in subject areas due to significant teacher retirements expected in the next decade?*

The impending teacher shortage is an issue not just for CTC, but for many other educational agencies including the California Department of Education and the teachers unions. Though it is not under the direct legislative charge of the CTC to address this issue directly with universities and LEAs, the Commission is supporting and continues to explore multiple pathways for individuals to enter into the profession. Two state-funded program opportunities under the CTC for this purpose are the district internship program and the paraprofessional program. The district internship teacher preparation programs must meet the CTC teacher preparation standards and are well-supported and assisted by CTC staff to meet local LEA needs in preparing qualified teachers in their local context. The paraprofessional program has also been successful in recruiting and assisting individuals already working in schools as paraprofessionals to obtain a full teaching credential. Both programs have shown a strong increase in enrollment and, pending funding, could be expanded to serve a larger number of participants.

10. How well are BTSA and university and district intern programs facilitating increased teacher competency and providing support services for beginning teachers and interns? How do you make this determination?

As the result of SB 2042 (Chapter 548, Statutes of 1998), increased accountability for university and district intern programs and BTSA induction programs have led to stronger, more cohesive training that increase the quality of how California's teachers are prepared for the classroom. First, to clarify, the BTSA induction programs prepare first and second year teachers who have completed a teacher preparation program (either university or intern) and already hold preliminary credential. Intern programs, on the other hand, are teacher preparation programs and, therefore, follow educator program preparation standards. However, the two programs share common traits as teachers in both are in classrooms working directly with students. A recent study on BTSA and Intern Programs mandated by SB 1209 (Chapter 527, Statutes 2006) was presented to the Governor and the legislature earlier this year. The study found both programs are effectively fulfilling the legislative goals and are leading to increased teacher competency. In fact, the study found induction program structures to be "models of effective program organization and improvement" and recommended that intern programs follow a similar structure of support as intern training requires a similar type of contextualized support in contrast to traditional university teacher preparation programs.

11. Do you believe beginning (induction) and intern teachers are sufficiently prepared to address the needs of special populations of students such as English learners and special education students?

Both induction programs and intern teacher preparation programs MUST address the Commission's program standards in order to be approved (for intern programs, these are the same standards that apply to university preparation programs). These standards require that the both induction and intern programs address in detail, how they will support the participating teacher (BTSA) or the intern teacher (intern programs) in addressing the needs of special education students and English learners. These standards and the Commission's accreditation system ensure that intern teachers are as well prepared to address special needs students as university programs. Further, research and survey data from these programs show that many benefit from the on time, "learn by doing" nature of these programs.

However, how we effectively guide and support new teachers and interns currently in the classrooms to serve these student populations is in need of review. There is evidence that new teachers and interns need more contextualized support and mentoring in order to be more effective as they work directly with special education and EL students. The study on BTSA and Intern Programs mandated by SB 1209 (Chapter 527, Stats 2006) found that while program standards are driving the training of beginning and intern teachers, 1) there is currently redundancy of training for special needs populations between pre-service and BTSA induction programs, and 2) interns require more tightly focused support in addressing special needs populations than their university counterparts who do not have full classroom responsibilities. The study further made several recommendations to increase the effectiveness of both induction

and intern programs in this area. Based on some of the recommendations in this report, the Commission is already revising its current induction program standards so that they better support participants to address the needs of EL and special education students and will be reviewing its common standards to ensure that these are contextualized to specific educator training needs.

12. California education policy provides significant focus on teachers in their early years. Is there a need to provide additional opportunities for professional development for experienced teachers that go beyond weekend and/or after-school professional activities for this group?

Yes, absolutely, there is need to provide additional opportunities for professional development for experienced teachers beyond the intermittent weekend and afterschool workshops! This was a focus of my doctoral research, and I could go on about the professional life-cycle of teachers, teacher motivation and burn-out. To be brief, however, research indicates that to be an effective teacher, one must continue to grow on both personal and professional levels. This is particularly difficult, however, because the essence of a teacher's work is still a fairly solitary endeavor and "development" is much more individualized in nature as a teacher becomes more proficient in the classroom. The types of professional development for experienced teachers that seem to most promote personal and intellectual growth are:

- a) collaboration with peers (either through joint ventures (taking on a schoolwide project) or becoming a mentor teacher (BTSA coach), or joining a subject-matter collaborative (Math Project); and/or
- b) moving into leadership positions (becoming department chair, moving into administration or a union representative) or seeking graduate work or additional education/training (getting an additional credential, a Masters or PhD, etc.).

Though we can encourage experienced teachers to pursue these avenues of growth, these are difficult to dictate. There has to be a strong element of personal will or investment in the activities for them to be effective. Past state policies that have "required" professional development for experienced teachers have not been wholly effective and served only as "hoops" to jump through. As a result, the requirement has had little impact on raising the overall quality of teaching and learning in classrooms.

Rather than implementing a "stick" for forcing professional development, the state should reward good teachers for continued, quality professional development that directly lead to higher student achievement results. This would require that we look at teacher incentive programs and better measurements of student progress.

The Commission is very interested in this issue and has begun discussions on a "3rd Tier," or advanced, credential as a means for experienced teachers to pursue and demonstrate higher mastery of pedagogical content.

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

JULIE NYSTROM, Consultant to SENATOR BATTIN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

JEFFREY D. THOMPSON, Assistant Secretary
Health Care Policy
Department of Corrections and Rehabilitation

DANIEL W. RICHARDS, Member
Fish and Game Commission

RICHARD ROGERS, President
California Fish and Game Commission

JIM KELLOGG, Member
Fish and Game Commission

MICHAEL SUTTON
Monterey Bay Aquarium

CINDY GUSTAFSON, Vice President
Fish and Game Commission

1 WARNER CHABOT
Ocean Conservancy

2 BILL GAINES, President
3 California Outdoor Heritage Alliance

4 TOM RAFTICAN, President
5 United Anglers of Southern California

6 MICHAEL J. HERSEK
7 State Public Defender
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ISAM HASENIN, Members, State Building
Standards Commission; JOHN L. LITTRELL,
Member, Alfred E. Alquist Seismic Safety
Commission; Members of the Water Quality
Control Boards: THOMAS J. DAVIS and
EDWARD J. MUZIK, Colorado River Basin
Region; MIKE A DISPENZA, Lahontan Region;
JAMES P. McGRATH and RAMESHWAR SINGH, Ph.D.,
San Francisco Bay Region; and WILLIAM A.
RUH, Santa Ana Region

--ooOoo--

CHAIRMAN PERATA: We will begin.

On our agenda we have three appointees that are appearing today on behalf of the Governor. The first one is Jeffrey Thompson.

Welcome.

MR. THOMPSON: Thank you.

CHAIRMAN PERATA: You may open.

MR. THOMPSON: Thank you, Senator Perata and Members of the Committee.

I am Jeff Thompson. I was appointed by the Governor to the operating title of Director of Health Care Operations.

I think before I go into my qualifications, it's important for me to put this in context for you.

The Director of Health Care Operations reports to the Chief Deputy Secretary of Correctional Health Care Services and represents the position that has the primary responsible -- responsibility for administrative support. I think this is important as we look at qualifications simply because I don't want to represent myself as supervising on an ongoing, long-term basis our clinic -- our clinical programs. And so, I know that as I've worked through the process, there have been some questions about my qualifications to -- to supervise in a clinical context. And I will openly concede that I am not a dentist, and I'm not a mental health clinician. But I am very capable of working to supervise administrative services and

1 operations.

2 And that brings me to my qualifications for the
3 position. I have a strong education administration background.
4 I have been very successful in education administration. I have
5 my Master's Degree from the University of Pacific. I am a
6 California native, have lived in the -- in San Joaquin County
7 all my life, Lodi. And I have a very strong commitment to
8 supporting our state in whatever I am called to do.

9 In that regard as an administrator, as a manager
10 in this particular case, I believe that the lack of experience
11 in Corrections and/or perhaps in health care is one of the
12 reasons why I was asked by the Governor to fill this
13 administrative support leadership role. I come to this position
14 with an open mind toward problem solving and addressing the
15 operational support needs that we need to do to put together in
16 the Department of Corrections and Rehabilitation, Division of
17 Health Care Services, to rebuild that division.

18 By way of reminder, the -- with the several court
19 cases that we're all very concerned about, the health services
20 delivery system in the correctional system now exists under a
21 bifurcated governance structure. And frankly, the remnants of
22 that governance structure have -- are what we're putting back
23 together within the Division of Health Care Services. And we've
24 only begun to do the hard work that needs to be done there to
25 get the job done that you expect. At this point, we're charged
26 with supporting dental and mental health services. And I also
27 feel that it's part of my charge to work very closely with the
28 receiver, to see how we can reconstitute a cohesive, cost

1 effective health care system in our -- in our correctional
2 environment. And it's my responsibility and my role, as an
3 appointee, I believe, to do that. And I believe it's a call.

4 I'm a Rotarian. I believe in service above self.
5 And I believe that that's the fundamental belief that I carry
6 forward in doing this.

7 And I think I'll stop there to simply saying that
8 you have my resume. You know my experience. I want to be
9 available to you for questions.

10 CHAIRMAN PERATA: Thank you.

11 You've probably seen this?

12 MR. THOMPSON: Yes, I have.

13 CHAIRMAN PERATA: It ran in The Mercury.

14 Would you comment on that?

15 MR. THOMPSON: Absolutely, Senator.

16 One of the things that I have done since arriving
17 on the job in December was, as of March 31st, the statewide
18 dental director stepped down, and Mr. Dezember asked me to
19 assume, on a short-term basis while we searched for a new
20 statewide dental director, to assume that position on an interim
21 basis only. And in so doing, I was -- soon learned about this
22 article when it was published. And frankly, immediately started
23 to look into the -- the allegations made in the article.

24 I'm very concerned about that article and about
25 how --

26 CHAIRMAN PERATA: What did you find out? Is it
27 accurate?

28 MR. THOMPSON: What we found out is, first of

1 all, the reporter interviewed a small sampling of inmates, and
2 there is --

3 CHAIRMAN PERATA: They didn't all have their
4 teeth pulled?

5 MR. THOMPSON: That's true. They didn't all have
6 their teeth pulled.

7 However, that being said, I'm not going to defend
8 the Department or our dental policies in this particular area,
9 but rather say that I think we have lot of room for
10 improvement.

11 What I learned is that right now, it is
12 challenging for some of our women inmates to get into our
13 community correctional programs because of dental care needs.
14 And it's my charge to make sure that health care needs do not
15 block our ability to place inmates, our women inmates, in these
16 programs.

17 And so, I'm working very closely with Wendy
18 Stills in the Female Offenders Programs and Services Division to
19 see how we can problem solve there. And as recently as last
20 week I was at Valley State Prison for Women, working with our
21 chief dentist and with custody staff to look at how they can
22 resolve these issues.

23 CHAIRMAN PERATA: Let me just say that the best
24 answer would say that this is bull shit, and it's not going to
25 happen again.

26 You gave me a nice political answer that didn't
27 serve me well, which means it doesn't serve you well. That's
28 the answer to the question, "That's outrageous. I don't care

1 what the reason is, it's outrageous."

2 I just find it's like reading another book on
3 Nazi Germany. That's the kind of stuff that goes on in other
4 countries and other regimes, not here. I don't care how close
5 to the truth it is.

6 So, one of the things I'm going to want later for
7 you to come back with is a complete report on what the truth
8 was.

9 You know, I was being facetious with only a
10 couple of people, not everybody.

11 I want a complete detail of that, because you
12 said yourself that there must be some fire under that smoke.
13 And I want to know how big the fire is and how you're going to
14 put it out.

15 That's just me talking.

16 MR. THOMPSON: Yes, sir.

17 CHAIRMAN PERATA: Anybody?

18 SENATOR BATTIN: Without using the colorful
19 language of Senator Perata, I have to agree. The choices that
20 these women were given, either pull out your teeth or don't see
21 your baby, is unconscionable.

22 I will accept that you just came on in December,
23 and so you're not responsible for it happening and when the
24 article came out.

25 I would very much like to know -- I think
26 probably all the Members here -- what's being done. Situations
27 like this are not -- are just terrible, and they really do
28 affect the most helpless. Whether the women in prison, whatever

1 their reason that they're in prison, their babies did absolutely
2 nothing wrong. And to be denied their mom unless their mother
3 has to pull her teeth because she can't get dental care, and the
4 choice is either pull out the teeth because they may have some
5 infection or it may affect the child, or not be able to see the
6 child, is a Hobson's Choice.

7 I don't even know how to express it.

8 So, I think that it needs to be certainly focused
9 on and gone after. Nobody deserves anything like that.

10 MR. THOMPSON: I absolutely agree, Senator.

11 And I can go into more detail now, if you would
12 like me to, Senator Perata?

13 CHAIRMAN PERATA: No, I think what I'd like you
14 to do is, I'd like to see a complete report on what happened,
15 and when you found out about it, and what you've done, and
16 what's going to happen prospectively.

17 Let me ask you, we've got this very strange
18 situation with the federal government. Not an unhappy
19 relationship, but different.

20 How does that fit altogether?

21 MR. THOMPSON: Well, as far as I'm concerned, the
22 way it fits together is, I need to work very closely with the
23 receiver's office at the operating level to make sure that we're
24 coordinating work where there's overlap. So in administration,
25 we're talking about areas like contracts, contracts for clinical
26 services. We're looking at making better coordination of
27 support services. How our nurses support our mental health and
28 dental folks. Pharmaceutical services, there's an overlap there

1 as -- as we look at health care from a holistic perspective.

2 And what I'm doing at the operational level is
3 working with appropriate staff in their administrative support
4 area to make sure that we are connected with that work. A good
5 example is with contracts for mental health professionals or
6 dentists, registry contacts in the community.

7 As it was prior to my arrival here, those
8 contracts were routinely being processed through the receiver's
9 office without any review on the part of our division. So,
10 there was no oversight regarding the cost for services, for
11 example.

12 And I think we need to have some common sense
13 there and look at every dollar we can save, make sure that we're
14 not being -- issuing contracts for services that are -- that are
15 inflated.

16 So, what I've done is initiated a process or
17 processes whereby we are involved directly in the review of
18 those contracts, and we have to approve the contracts prior to
19 their being distributed by the receiver. So, that's one
20 example.

21 CHAIRMAN PERATA: Thank you.

22 Questions?

23 SENATOR DUTTON: Only just a couple.

24 When you take a look at your background and
25 experience since graduation from college, you've spent about six
26 year working for the State of California in the Finance
27 Department in various capacities.

28 MR. THOMPSON: Yes.

1 SENATOR DUTTON: Then you went on to a career of
2 teaching for some 26 years, somewhere in there.

3 MR. THOMPSON: Actually, Senator, I taught for
4 five years, and then went into administration. So, I was
5 actually in school administration for the majority of my time.

6 I took my Master's at Pacific and was in
7 education administration and leadership.

8 SENATOR DUTTON: Okay. I see as a principal and
9 vice principal, a teacher on special assignment, school
10 improvement, vocational.

11 But you did teach?

12 MR. THOMPSON: Yes, I did. Yes.

13 SENATOR DUTTON: So my question to you, I guess,
14 at this point I know people, when they've had a successful
15 career in certain areas, look for changes.

16 What made you want to come in for this position?
17 This doesn't seem to be related to anything that you've done.

18 MR. THOMPSON: I think that's a great question.

19 You know, one thing that I've never shied away
20 from in life is challenge. And I've always been presented with
21 callings at different times in my life whereby I would take on
22 different challenges.

23 There's never been a job that I've taken on that
24 hasn't had some unique challenge to it. For example, when I
25 first went into administration, I was challenged by the
26 opportunity to do some specialized work with school improvement
27 that had never been done in the high school I was in before. I
28 was a co-author of a -- of a plan that ultimately has continued

1 to yield tremendous results for the school district.

2 Then I went on to Bear Creek High School, where
3 we opened the high school. So, I had direct responsibility for
4 space, for staffing, for curriculum development, a variety of
5 things. And then on to the opportunity to open up the Middle
6 College High School at Delta College, which then became a
7 predecessor to several early college high schools across the
8 state.

9 So, there have been challenges in my life. And
10 you know, when one -- when one gets a letter from the Governor
11 inviting you -- one to serve in a capacity, I didn't solicit
12 this job. I was invited to -- for appointment.

13 CHAIRMAN PERATA: I got one of those. I threw it
14 away.

15 [Laughter.]

16 MR. THOMPSON: Senator, you're a wiser man than I
17 probably.

18 So, it's the challenge, and I believe in service.
19 As I said, as a Rotarian, I believe in service above self. And
20 that's why I'm here.

21 SENATOR DUTTON: You're obviously a well-educated
22 man. What did you do to actually -- because this is something a
23 little different. Certainly you need to have some kind of
24 knowledge about medical procedures, especially in the dental
25 industry.

26 What did you do to kind of prepare yourself --

27 MR. THOMPSON: Well actually --

28 SENATOR DUTTON: -- to get the technical

1 knowledge that you required?

2 MR. THOMPSON: Actually it's on the job training,
3 and I'm -- again, I'm not going to represent myself as a
4 clinician. But I do ask a lot of questions, and I do spend a
5 lot of time listening and conferring with -- with our
6 clinicians.

7 Most recently in this interim capacity as
8 statewide dental director, I spent three days with our chief
9 dentists at a gathering, which was designed to really work on
10 our addressing the Perez issues. And frankly, I think that
11 we'll come out of Perez sooner than any of our other suits,
12 based on the commitment that I see from our -- from our
13 professionals in this area.

14 And during that time, I listened and learned a
15 great deal about the practices and procedures and issues that we
16 have in our institutions. And I continue to participate in
17 similar sessions.

18 I also have meet with our mental health
19 professionals and actually presented to them relative to
20 information technology issues, which is an area of great --
21 very -- of importance to me.

22 So, I do a lot to get out and listen and learn
23 from -- from our clinicians.

24 I want to just share with you one comment that
25 was made by one of our chief dentists after -- after the
26 three-day conference. He came up to me, and this is a gentleman
27 who is a respected chief dentist in one of our institutions.

28 He said, "You know, when I heard that you were

1 going to be appointed to this position and then subsequently
2 appointed as interim statewide dental director, I was very
3 skeptical. I thought, what the heck's going on here? He says,
4 "After spending three days with you, and working with you, and
5 seeing you operate and support us," he said, "you know, I would
6 hope that you would consider staying on as statewide dental
7 director."

8 I didn't solicit that comment. I felt I was
9 humbled by the comment. And I assured him that we need to look
10 for a national search and find a top clinician or mental health
11 care professional to guide our denial program.

12 But the fact that he came up and said that to me
13 meant a great deal to me.

14 SENATOR DUTTON: Obviously, one of our big
15 challenges, most of the medical facilities in the program within
16 the Department of Corrections is under the control of a
17 receiver, with the exception of a couple of the primary areas
18 with dental and mental health services.

19 Are you also part of the team that's going to
20 help come up with the transition plan to get us away from the
21 receiver so that we can actually resume control over the medical
22 program for the inmates?

23 MR. THOMPSON: At the operations level, yes.
24 Yes.

25 SENATOR DUTTON: And so, you're actively working
26 on it?

27 MR. THOMPSON: Yes.

28 SENATOR DUTTON: Based on what you currently

1 know, any ideas on when we can foresee what would be a timeframe
2 that you would look at based on your best guess at this point?

3 MR. THOMPSON: I can only cite what the receiver
4 says, which is, you know, four to five years. I mean, it's an
5 incredibly complex process. And certainly, I'm very concerned
6 about how we can approach this on as timely a basis as we can.

7 It's costing us a lot of money. We need to have
8 some common sense, and we need to look at how we put dollars
9 back -- back in our taxpayers' pockets or in other areas.

10 I mean, there's another hat I wear every -- every
11 week, and that is, I am an elected school board member in my
12 local school district. And I'm confronted with this on the
13 other side of the table, where I just got done participating in
14 discussions to cut about \$5 million out of our school district
15 budget. That's not a comfortable place to be.

16 SENATOR DUTTON: Yeah, you ought to be in our
17 shoes right now.

18 MR. THOMPSON: Exactly. Well, I know. I have a
19 lot of admiration for the difficult work that all of you
20 gentlemen engage in.

21 SENATOR DUTTON: Thank you.

22 SENATOR PADILLA: I just want to go on record in
23 support of the Pro Tem's comments regarding the teeth being
24 pulled.

25 CHAIRMAN PERATA: Colorful comments.

26 SENATOR PADILLA: Colorful. They could have been
27 more colorful, but we're in public.

28 Not just the tone and tenor of the response and

1 the follow-up. I mean, it's not just, "I'm going to look into,"
2 but "It stops now."

3 It's not going to continue. We're not going to
4 leave one ounce of a possibility that we'll hear about another
5 case between now and whenever you do report back to this
6 Committee.

7 If I have a question, it's that I heard your
8 responses earlier about you've been here only since December,
9 and how much has been under your control versus your
10 predecessor's, or within your purview versus your predecessor's.

11 But in your responses to the questionnaire sent
12 to you by the Rules Committee, you start out by saying.

13 "I believe that it is unfair to
14 suggest that this new story
15 accurately depicts CDCR dental
16 policy and I am concerned that
17 someone in CDCR would make this
18 claim."

19 On one the hand you're saying, I don't know how
20 anybody comes even close to making this allegation, while on the
21 other hand you're saying, I don't know enough about it. Or, on
22 the other hand saying, it's unacceptable.

23 How do you reconcile these different
24 responses?

25 MR. THOMPSON: I think that's a very good
26 question, Senator. Let me reconcile it by saying this.

27 First of all, my responses were written prior to
28 my being able to make the visit and do more personal

1 investigation into this. At the time I wrote my response, it
2 was an expression of concern.

3 I do not condone this. It is an unacceptable
4 situation and condition if this is true.

5 In talking with our clinicians about this, it is
6 clearly a violation of their ethical responsibility as dentists
7 if that's going on, and that is absolutely unacceptable. Any
8 dentists that are indeed engaging in that activity will be
9 considered for -- for appropriate action through our clinical --
10 our peer review process.

11 And I can say with -- with -- in fact, that we
12 are using the peer review process to look at -- at our
13 clinicians. And in fact, we have moved toward dismissal. I
14 can't go into specific detail, obviously, but this is
15 unacceptable. We are not going to allow these kinds of
16 practices to continue. That's an absolute.

17 I want to assure you. I don't want to gloss this
18 over. This is a significant issue. It angers me.

19 SENATOR PADILLA: Let me suggest this, that in
20 the future when issues as significant and as serious as this
21 come up again, because they will, that you take the time to do
22 the investigation and the visiting before beginning to make an
23 answer that at least comes across, if not intended, to sort of
24 dismiss the significance of it.

25 But since you raised this peer review process as
26 part of what you're doing, let me ask you this.

27 As part of the peer review process, is it
28 inclusive or not to dental professionals outside of

1 Corrections?

2 MR. THOMPSON: Actually at this point, the peer
3 review process operates within the broader context of health
4 care within Corrections and the receiver's receivership, and
5 involves not just dentists in the review process, but other
6 medical professionals as well in the -- in that peer review
7 process.

8 SENATOR PADILLA: Delivering dental and other
9 sorts of medical and health care within Corrections, I can
10 understand, has sort of a uniqueness to it. There's elements of
11 providing that service that folks in the outside world, if you
12 will, wouldn't have to consider.

13 But that being the case, when you go to dental
14 school, you go to dental school with everybody else. When you
15 go to medical school, you go to medical school with everybody
16 else. You get the same training and you take the same oaths
17 about the ethics of service delivery.

18 So, I think it would be helpful, whether it's
19 formally or informally, to incorporate input and a point of view
20 from outside professionals as part of your process.

21 MR. THOMPSON: I would concur.

22 I would say that our Chief Deputy Director for
23 Dental, Dr. Park, is -- has reminded me that all of the dentists
24 within our correctional setting operate under the California
25 Dental Board and are licensed by the California Dental Board,
26 and in that context are expected to abide by that code of
27 ethics. And that's the standard that we use.

28 SENATOR PADILLA: And I appreciate that. That's

1 the standard that they're expected to abide by. That's the
2 standard that applies.

3 But in a case like this, when you're doing
4 investigation or peer review specifically, those peers that are
5 doing the reviewing, I would hope somehow in that process you
6 can incorporate some of the outside world perspective on this.

7 MR. THOMPSON: Thank you.

8 CHAIRMAN PERATA: Senator Cedillo.

9 SENATOR CEDILLO: I'm not one to continue to beat
10 a dead horse. I'll just attach myself to the comments of my
11 colleagues, particularly Senator Padilla's caution to you about
12 the thoughtfulness of your responses.

13 I'm not prepared to move this forward at this
14 moment. I trust that you feel the same way.

15 There are very serious concerns, and given the
16 challenges that you confront, there's a need for us to develop
17 some confidence in your leadership.

18 The Governor can pick whomever he wants and send
19 letters out to whomever he wants to join him. And I imagine
20 that it is very flattering to receive a letter from the Governor
21 to join his administration.

22 But at the same time, we have duties and
23 obligations that balance his choices.

24 CHAIRMAN PERATA: Thank you.

25 Senator Dutton.

26 SENATOR DUTTON: Actually, I agree with Senator
27 Cedillo regarding that. I'm assuming you're going to come back
28 before we go forward.

1 Just in reading the article, why didn't they just
2 change the policy and let the women see their children without
3 anything happening?

4 SENATOR BATTIN: Danger of infection.

5 SENATOR DUTTON: Is that what it was?

6 SENATOR BATTIN: That's what the article said.

7 SENATOR DUTTON: Okay.

8 SENATOR BATTIN: Mr. Thompson, I don't hold you
9 responsible for that. It was before your time that the policy
10 was set up and was going on.

11 I do hold you responsible to solve it in your
12 position that you have. I have great confidence that you will.

13 I guess you can see the reaction from Democrats
14 and Republicans on it. Everybody looked at that and said that's
15 just not right.

16 And I also understand you are restrained on
17 certain things that you can say, from what you did say, in terms
18 of some disciplinary actions going on, or people are being
19 terminated, so I will accept that as well.

20 But I would just want to echo everybody. We need
21 to know that it's getting fixed.

22 Again, I just want to make a point. You're
23 getting vented at, but it's the outrageousness of the situation,
24 and you just happen to be sitting in front us.

25 So, I'm sure that you will get back to us and
26 show us what's being done, and how this is not going to happen
27 any more.

28 CHAIRMAN PERATA: I just would like to suggest

1 one other thing.

2 I don't hold it against you that you're a
3 teacher, by the way. We can adapt. We're slow, but we finally
4 figure out some things. So, I'm glad that there are some things
5 that us teachers can do, other than what we've been doing.

6 But what I would like to suggest is that you get
7 out into the prisons. I know you said you visited four, but get
8 out more. Nothing will disabuse people any faster about your
9 capabilities or determination than seeing you out there. So as
10 your job permits, after you solve this problem, that would be
11 something that I would just recommend.

12 What I'm going to do is, I'm going to put this
13 over until you've had a chance to prepare something to come
14 back.

15 I am going to not make it for a "vote only." I'm
16 going to have you come back so we can discuss it, and let people
17 in the audience come. And if they want to talk about it, they
18 may.

19 And you can just let Nettie know when you're
20 prepared to do that. Okay?

21 MR. THOMPSON: Sure.

22 SENATOR BATTIN: You have sometime.

23 CHAIRMAN PERATA: You're in until December.
24 Don't rush. Get it right.

25 SENATOR BATTIN: August 15th in theory.

26 CHAIRMAN PERATA: In theory.

27 Thank you very much. Appreciate it.

28 I'm going to take out of order Daniel Richards

1 because there's a high-priced lobbyist here who's going to make
2 his client go broke. If I can get him up and out, then we won't
3 have to worry about that.

4 Mr. Richards.

5 SENATOR DUTTON: Mr. Chairman, if I may, if
6 you'll indulge me for a minute, only because I've known -- and
7 please don't hold this against him.

8 CHAIRMAN PERATA: I was hoping you weren't going
9 to bring it up.

10 [Laughter.]

11 SENATOR DUTTON: I've actually known Mr. Richards
12 for a number of years, well over twenty-five. And Mr. Richards
13 is one of those rare combinations of somebody who actually does
14 a lot in his community as well as volunteers for a lot of
15 different types of organizations and things of that nature.

16 I've had the opportunity to work with Dan on
17 numerous nonprofit organizations and boards. Most recently in
18 the last three years, he's actually served on the San Bernardino
19 County Fish and Game Commission. So, he's become a lot more
20 aware than the average citizen with regards to some of the
21 challenges we have, especially within the San Bernardino County
22 region, where you're dealing with wildfires, and you've got such
23 a huge amount of federal lands that you have to interact with or
24 become aware of.

25 And so, I would certainly highly recommend him.
26 I think you'll be satisfied with his qualifications. So, I'd
27 like to introduce you to Dan Richards.

28 CHAIRMAN PERATA: Would you like to defend

1 yourself?

2 [Laughter.]

3 MR. RICHARDS: Absolutely.

4 First, let me report to you that I'm unaware of
5 any improper teeth pulling at the Fish and Game Commission or
6 the Department.

7 CHAIRMAN PERATA: Don't they call you guys Hook
8 and Bullet?

9 MR. RICHARDS: Some of us, yes.

10 [Laughter.]

11 MR. RICHARDS: My name is Dan Richards. I was
12 appointed by the Governor to this position. I consider it a
13 tremendous honor.

14 I'm very enthused about it. I've put in a lot of
15 time and effort on it already. I serve with a terrific
16 Commission already, very passionate, very diverse group, very
17 committed.

18 We were -- spent the morning, all of us, with a
19 joint meeting with Blue Ribbon Task Force on the MLPA North
20 County. The presentation was terrific. It's a fascinating
21 process.

22 I've been -- I've been hunting, and I grew up in
23 West Virginia, been hunting and fishing for over 50 years. I
24 consider myself a conservationist. Some of the biggest --
25 actually, the conservationists I know the best are all hunters
26 and fishermen. And I learned some terrific lessons back there
27 about the proper way to go about that business, and I try to
28 carry that forward today.

1 I look forward to this opportunity very, very
2 much.

3 CHAIRMAN PERATA: Thank you.

4 MR. RICHARDS: Thank you.

5 CHAIRMAN PERATA: Do you have family here?

6 MR. RICHARDS: No, sir, I don't. My daughter is
7 working in Los Angeles and unable to come today. And I'm not
8 sure exactly what the wife is doing.

9 [Laughter.]

10 CHAIRMAN PERATA: Certainly was a candid answer.

11 [Laughter.]

12 MR. RICHARDS: She alleges to be watching on the
13 internet.

14 CHAIRMAN PERATA: So if you are, and you want to
15 e-mail or text message, go ahead.

16 I'll just be candid with you. One of the
17 concerns probably you've heard about, some of the
18 environmentalists are worried that you might want to pave over
19 rivers and let those little fishies run through the grid.

20 I think it was said earlier by Senator Cedillo,
21 we've generally taken the position that the Governor gets to
22 appoint who he wants. And he's done on balance in areas like
23 this a remarkably good job.

24 You've got time ahead of you. But I think we
25 share a lot in common about the Commission and the Department.
26 I think it's woefully underfunded. We're asking people to do an
27 impossible job.

28 One of the things I would just really encourage

1 you is to be an activist on the Commission. That means, I
2 think, taking positions of advocacy that perhaps may not be in
3 line with your padrone, since the Governor appointed you.

4 But, you know, being the Governor of the State of
5 California is, I believe, an impossible job. So, that he might
6 not know exactly how everything works is probably a good bet.
7 And you could say specifically, "Now that you've put me here,
8 these are the problems that I see; these are the things that I
9 would encourage you to do to remedy."

10 And one would be to able to increase funding.
11 So, you would be able to point out some specific things. That's
12 really the benefit of being the appointee of a sitting Governor,
13 is that I think you do have the ear, and he would be
14 responsive.

15 And since you are a dedicated outdoorsman, and I
16 have not found that people who are hunters and fishers of fish,
17 as opposed to men, I have never found that that's inconsistent
18 with liking the environment.

19 MR. RICHARDS: They are definitely not
20 inconsistent, not with my friends they're not.

21 CHAIRMAN PERATA: In honesty, the only thing I
22 know about West Virginia is their football teams, but I'm sure
23 it's a good place to hunt and fish.

24 MR. RICHARDS: It's a beautiful place.

25 I agree with everything you just said. When I
26 met with --

27 CHAIRMAN PERATA: Smart guy, too.

28 [Laughter.]

1 CHAIRMAN PERATA: It's going to work out just
2 fine.

3 [Laughter.]

4 MR. RICHARDS: Thank you very much. I should
5 probably just stop right now.

6 [Laughter.]

7 CHAIRMAN PERATA: It's that journalism
8 background.

9 MR. RICHARDS: When I met with Nettie and some
10 other staff members, I was telling her and them that I'm not
11 bashful. And I'm very much looking forward to this, and I do
12 intend to be an advocate. I can't wait to keep doing this.

13 This is a great opportunity, huge
14 responsibility, woefully underfunded. I don't have to tell you
15 that we have less than 200 wardens in the field.

16 CHAIRMAN PERATA: It's 199; there's one behind
17 you.

18 [Laughter.]

19 MR. RICHARDS: And we're getting ready to adopt
20 just some of the most amazing legislation in the country, maybe
21 the world, truthfully, if you really take a really good look at
22 it. And to not be able to enforce it is, it's -- I don't want
23 to say meaningless, because that would belittle it -- but at the
24 end of the day, if you can't enforce it, what's the point?

25 CHAIRMAN PERATA: No, it's just a flag salute.
26 You're right.

27 MR. RICHARDS: Exactly. We've got to get there.
28 And the great thing is, if you'll allow me just

1 this one comment, I've met with the environmental groups. First
2 thing I did was ask to meet with a group of them, which I did.
3 It was very nice, cordial. I met with the Hook and Bullet guys.
4 I've met with Democrats, Republicans. I've met with Assembly
5 Members and Senators.

6 I haven't met with one person yet who told me we
7 have plenty of wardens. Not one.

8 So, you've got to figure that with that kind of
9 pretty broad-based support -- and it's a lot more than just
10 enforcement of Fish and Game laws, of course. I mean, they're
11 doing all kinds of --

12 CHAIRMAN PERATA: Don't run away with this idea
13 that it's support, but you are fortunate, because the Vice Chair
14 of the Senate Budget Committee is sitting right here. And
15 people can say we don't have enough, but the real question is
16 putting in where we don't have enough.

17 MR. RICHARDS: I intend to mention this to him --

18 CHAIRMAN PERATA: Would you do that?

19 MR. RICHARDS: -- when I get the chance.

20 CHAIRMAN PERATA: That's good. Your wife should
21 be proud of you, where ever she is.

22 [Laughter.]

23 CHAIRMAN PERATA: And I also noted that we
24 confirmed somebody recently, the marine biology-type folks.

25 MR. RICHARDS: Oh, Mike Sutton.

26 CHAIRMAN PERATA: Oh, there you are, yes.

27 MR. RICHARDS: I am particularly pleased that
28 my --

1 CHAIRMAN PERATA: Some of my environmental
2 friends thought you were going to go there and try and go to the
3 Aquarium and then fish for the fish, but you didn't.

4 MR. RICHARDS: No, I didn't, but I thought I
5 might.

6 [Laughter.]

7 CHAIRMAN PERATA: You're far too honest for this
8 job.

9 [Laughter.]

10 MR. RICHARDS: I'm particularly pleased that my
11 four fellow Commissioners are here today. It's a genuine honor,
12 and I mean that.

13 CHAIRMAN PERATA: Yes, it's unusual, too.

14 MR. RICHARDS: I understand that they're busy
15 people, have a lot of things to do other than this. So, it
16 means a lot to me.

17 SENATOR BATTIN: I would move the nomination, but
18 I'll leave that to Bob.

19 CHAIRMAN PERATA: Alex, do you want to grill this
20 guy? Bad choice of words.

21 [Laughter.]

22 SENATOR PADILLA: I'll let Dutton do it.

23 SENATOR DUTTON: It will be my honor to move for
24 approval of Mr. Richards to the Fish and Game Commission.

25 CHAIRMAN PERATA: Is there anybody in the
26 audience who wants to screw that up?

27 [Laughter.]

28 CHAIRMAN PERATA: Well, if the Commissioners want

1 to come and say something, you're more than welcome. Please,
2 come up.

3 MR. ROGERS: Mr. Chairman and Senators, I'm not
4 going to give you the amusement of having Jim sit on my lap.
5 That's not going to happen.

6 CHAIRMAN PERATA: Give us your name just in case
7 he does.

8 MR. ROGERS: Richard Rogers, Chairman. I'm
9 President of the Commission.

10 I have not known Dan for very long, and so I'm
11 not somebody who can tell you what his preconceived biases are,
12 because we've all got them.

13 What I can tell you is that Dan is as inquisitive
14 and aggressive a person, I think, that you just mentioned that
15 you want him to be. He's incredibly bright and very direct in
16 his questions. He accepts nothing in the status quo. He will
17 attack it and start to disassemble it.

18 Now, what that does is, it produces some
19 discomfort by the people who, perhaps, should be discomforted by
20 that.

21 But I personally stand here in support of Dan.
22 Once again, I don't know if he has preconceived biases, but he's
23 very bright and I think he can get past that.

24 CHAIRMAN PERATA: Thank you.

25 Jim, it's your turn.

26 MR. KELLOGG: My name is Jim Kellogg. I'm the
27 international representative to the United Association which is
28 the pipe trades. And I'm Secretary-Treasurer of the State

1 Building and Construction Trades Council, and also the longest
2 standing present Commissioner on the Commission.

3 And as you know, I don't usually come to these
4 things, so this is important to me.

5 I met Dan when he came on the Commission. I
6 watched a lot of Commissioners come and go. Some that thought
7 they were going to get there didn't, but Dan's there. He's
8 doing an excellent job. He's one of the brightest people that
9 has come on that Commission since I've been involved.

10 And he's as much of an environmentalist as the
11 people who claim to be environmentalists are.

12 And I just want to make the comment that some of
13 the same environmental people who are going to probably make a
14 request to postpone this for awhile are the same ones who
15 opposed my appointment, and today they're totally in love with
16 me.

17 [Laughter.]

18 MR. KELLOGG: And so, I think it would be
19 appropriate --

20 MR. RICHARDS: Who wouldn't be?

21 MR. KELLOGG: So, I'm just here to -- to offer
22 you guys my support for action today in confirming Dan Richards
23 to this Commission.

24 Thank you for the opportunity to ask that
25 request.

26 CHAIRMAN PERATA: You know, that's usually what
27 Wetch comes up to do.

28 MR. KELLOGG: Usually he comes up here for me, so

1 you know how important it is when I come.

2 CHAIRMAN PERATA: That's right, but he would say
3 the same thing about everybody loving you.

4 [Laughter.]

5 MR. SUTTON: Mr. President, Mike Sutton, Vice
6 President of the Monterey Bay Aquarium.

7 When we had Dan at the Aquarium, we frisked him
8 first before he was allowed in the door.

9 [Laughter.]

10 MR. SUTTON: I just wanted to say, in the time
11 that I've been privileged to work with Dan, I've found him an
12 honorable man. He's got an open mind. I think he's going to
13 defy efforts to predict how he's going to vote and how he's
14 going to act on the Commission.

15 And maybe most importantly, he knows what he
16 doesn't know. In other words, he knows enough to ask questions
17 to learn about issues before he makes up his mind, and I admire
18 that.

19 I look forward to working with him on the
20 Commission.

21 CHAIRMAN PERATA: Thank you.

22 MS. GUSTAFSON: We'll make it unanimous. I am
23 the thorn between the roses that have just spoken to you. I'm
24 Cindy Gustafson. I'm Vice President of the Fish and Game
25 Commission.

26 I'd like to echo my fellow Commissioners'
27 comments. Dan has been a real asset to the Commission. We have
28 not had a full Commission in quite sometime. We very much look

1 forward to having a full Commission. We have a very hefty
2 agenda, very critical issues to this state.

3 And I look forward to working with Dan. He is
4 everything they've said about him and more. Thank you very much.

5 CHAIRMAN PERATA: Thank you.

6 MR. CHABOT: I'm Warner Chabot. I'm with the
7 Ocean Conservancy. I'm here to jettison my testimony --

8 [Laughter.]

9 MR. CHABOT: -- and confess my total and absolute
10 undying love for Jim Kellogg.

11 [Laughter.]

12 MR. CHABOT: I am Warner Chabot. I'm the Vice
13 President of Ocean Conservancy.

14 On behalf of the 14 state and national
15 conservation groups that have written to this Committee, I do
16 request that your Committee defer today's vote to confirm
17 Mr. Richards on the Fish and Game Commission.

18 On a serious and personal note, I want to
19 acknowledge that at Mr. Richards' invitation, I and several
20 other conservation colleagues did meet with Mr. Richards. I
21 personally found him in that brief meeting to be decent,
22 straight forward, and a very thoughtful gentleman. I was
23 personally impressed with other issues about his personal life
24 and his commitment to various volunteer activities.

25 We did agree in that meeting that Fish and Game
26 wardens are too few and underpaid. But beyond that discussion,
27 we learned, in all honesty, very little about his opinion on
28 major, statewide policy issues.

1 I do want to stress that this is not a statement
2 of opposition to Mr. Richards, and I've said that to him to his
3 face prior to this meeting.

4 My comments are not directed at either his
5 qualifications, his judgment, or the voting record of
6 Mr. Richards because, to be frank, after only a few months on
7 the Commission, Mr. Richards has not built any public record of
8 decisions on fish, wildlife, or habitat issues of statewide
9 significance that can be evaluated by this Committee.

10 That's why we urge you not to vote prematurely to
11 confirm Mr. Richards today. We ask that you please allow the
12 public an opportunity to observe his record on the Commission
13 for several more months in order to make a more informed
14 decision.

15 This is for a six-year irrevocable fixed term,
16 one of the longest terms on any state board or commission. Your
17 confirmation vote has enormous consequences for California's
18 environment and our resource-dependent economy. The
19 Commission's five members will serve for six years, so each
20 Commissioner makes a very big difference.

21 Over the next decade, as California deals with
22 growth, climate change, drought, Bay-Delta water supply, marine
23 and endangered species issues, to list a few, the Fish and Game
24 Commission will and frankly must make various landmark decisions
25 and create public policy that will have significant historic
26 significance. Their decisions will affect millions of
27 Californians and their public trust resources.

28 Few California agencies compare with the Fish and

1 Game Commission for the potential far-reaching impact on
2 statewide natural resource, wildlife and habitat issues, and
3 environmental policy for an area of almost 160,000 square miles,
4 and over 3,000 square miles of marine waters. The Commission's
5 decisions will literally determine and define California's
6 resource legacy.

7 Your Committee sets the standard for how we
8 should review and evaluate the five people appointed to this
9 powerful and critical commission. They are committed for six
10 years to serve as trustees of the living resources for more than
11 37 million Californians and growing.

12 Please do not act today based on a virtually
13 nonexistent public record on statewide issues. The stakes for
14 California are too high. Please set a common sense review and
15 confirmation criteria for this important commission that
16 reflects the enormous value that Californians place on their
17 natural environment.

18 Please allow Mr. Richards to first work with his
19 Fish and Game colleagues for a reasonable period of time to
20 deliberate and to vote in a public forum on issues of major
21 statewide significance, then take a vote on confirmation.

22 On behalf of the nearly one million members of
23 the 14 organizations that have written to you, I thank you for
24 your consideration of these comments.

25 CHAIRMAN PERATA: Thank you.

26 Anyone else?

27 MR. GAINES: Mr. Chair, Members of the
28 Committee, my name is Bill Gaines. I'm President of the

1 California Outdoor Heritage Alliance.

2 I'm here today representing 22 local, state, and
3 national wildlife organizations, all of whom are in support of
4 confirmation of Dan Richards to a seat on the Fish and Game
5 Commission.

6 He has demonstrated a life-long commitment to the
7 preservation of our natural resources here in California. He
8 does come with a track record. He has served as Chair of the
9 San Bernardino County Fish and Game Commission, one of the
10 largest and most diverse counties, I should say, in the State of
11 California.

12 I have taken the time to sit down with Dan and
13 talk to him in detail to try to find out what kind of
14 predetermined opinions he may have on certain issues of
15 importance to the natural resources of our state.

16 I can tell you that he does not come in with any
17 predetermined opinions or positions. He is willing to listen
18 to all sides in regards to testimony on various issues that will
19 come in front of the Commission over the course of the next
20 several years, and he is willing to make his final decision
21 based on science, which is one of the most important roles that
22 the Fish and Game Commission has.

23 Lastly, he is an avid hunter and angler, and he
24 does have a very firm understanding of the various Fish and Game
25 regulations that will also come in front of the Fish and Game
26 Commission, which is also a very important role of the
27 Commission.

28 We ask you today not to delay his hearing, but to

1 go forth and support the confirmation of Dan Richards for the
2 Fish and Game Commission. Thank you very much.

3 CHAIRMAN PERATA: Thank you, sir.

4 Anyone else?

5 MR. RAFTICAN: Senator and Members of the
6 Committee, my name is Tom Raftican. I'm President of United
7 Anglers of Southern California. We represent one organization.
8 We've got about 35,000 affiliated members.

9 We do work with the PSO, Partners for Sustainable
10 Oceans, that also support Dan Richards, but I want to speak on
11 behalf of United Anglers of Southern California.

12 We work with a number of the conservation groups
13 out here. We've partnered on the Salton Sea with the Defenders
14 of Wildlife. We've done work on destructive fishing gear with
15 the Ocean Conservancy and a number of other groups.

16 We strongly support Dan Richards. We need good
17 people on the Fish and Game Commission, people that can stand up
18 and take that hard vote.

19 I'd just like to remind you that you may not have
20 all the time in the world. Last year we had a Commissioner who
21 had a stellar voting record, and the Governor pulled his -- his
22 commitment before you had a chance to vote on it.

23 So, while you've got Mr. Richards in front of
24 you, take the opportunity to get a good person in.

25 Thank you very much.

26 CHAIRMAN PERATA: Thank you.

27 You don't have any fish in Southern California,
28 Gil. You never told me.

1 SENATOR CEDILLO: I haven't seen them.

2 CHAIRMAN PERATA: I've seen the L.A. River. I
3 know they're not in there.

4 Anyone else? Anything further?

5 I am going to move the confirmation for one
6 particular reason. I would much prefer to see you operating in
7 a live theater with real bullets being fired. I think we're
8 going to get a much truer read of what you are if you are a
9 confirmed member of that commission.

10 You do have time on your clock, since you're
11 brand-new. So before you come to the Floor, we have time to
12 watch you work.

13 But I urge you to continue to work with the
14 environmental community. I have no reason to believe you won't.
15 They probably looked down here and saw BIA, stuff like that, as
16 prejudicial, unless you've been building on top of rivers.

17 I do know that the ocean side of this is
18 extraordinarily important.

19 MR. RICHARDS: Huge.

20 CHAIRMAN PERATA: And as someone who both likes
21 the ocean and the fact that I represent a water-oriented part of
22 California, I would encourage you to do that.

23 You seem to me, from what I've heard here today
24 and from what your sponsor has told me, that you're just that
25 kind of a guy.

26 So, I would move the this forward and urge you,
27 as we go through this budget right now, to take a big swing at
28 the opportunity. We're never going to have enough money in

1 California to do everything that needs to be done. In fact, we
2 seem to be going in the opposite direction.

3 But if we can invest in our environment at the
4 level of the jurisdiction that you're going to be presiding
5 over, then there's no reason for us to be here. That is
6 something that Republicans and Democrats ought to be able to
7 agree on.

8 But all these people that are shaking your hand
9 and slapping you on the back saying, "I absolutely agree," see
10 if they put up a green light or say "Aye."

11 Come back and visit us again.

12 MR. RICHARDS: I'd love to. Thank you very much.

13 CHAIRMAN PERATA: Call the roll, please.

14 SECRETARY WEBB: Cedillo.

15 SENATOR CEDILLO: Aye.

16 SECRETARY WEBB: Cedillo Aye. Dutton.

17 SENATOR DUTTON: Aye.

18 SECRETARY WEBB: Dutton Aye. Padilla.

19 SENATOR PADILLA: Aye.

20 SECRETARY WEBB: Padilla Aye. Battin.

21 SENATOR BATTIN: Aye.

22 SECRETARY WEBB: Battin Aye. Perata.

23 CHAIRMAN PERATA: Aye.

24 SECRETARY WEBB: Perata Aye. Five to zero.

25 CHAIRMAN PERATA: Congratulations.

26 MR. RICHARDS: Thank you very much.

27 CHAIRMAN PERATA: Call your wife.

28 MR. RICHARDS: I will. Thank you all very much.

1 CHAIRMAN PERATA: Mr. Hersek, I got the room
2 cleared out for you. State Public Defender, welcome.

3 MR. HERSEK: Thank you very much, Senator Perata
4 and Members of the Committee.

5 My name is Michael Hersek. I'm the State Public
6 Defender. I've served in the position for four years now. I've
7 been with the state for nearly 20 years. I served for the
8 California Supreme Court in the role of a research attorney,
9 doing criminal law matters, and then I served ten years working
10 at the State Public Defender's Office in San Francisco as a line
11 attorney.

12 I've submitted some documents, answers to the
13 Chair's questions. And I'm happy to address any concerns or
14 issues from the Committee.

15 CHAIRMAN PERATA: We kind of stripped your budget
16 recently; haven't we?

17 MR. HERSEK: You can say that.

18 CHAIRMAN PERATA: How is that going? You lost 41
19 positions, 18 attorneys since 2002.

20 MR. HERSEK: That's correct.

21 CHAIRMAN PERATA: How do you do that?

22 MR. HERSEK: Not easily.

23 In 1998, the Legislature, the Governor and the
24 Supreme Court came together and agreed upon a two-agency
25 approach to dealing with the then backlog of cases awaiting
26 appointment of counsel on appeal, death penalty cases. The two
27 agencies were the Office of the State Public Defender, my
28 agency, and the newly -- the then newly created Habeas Corpus

1 Resource Center.

2 At that time, we were statutorily authorized,
3 1998, 128 positions. Due to the budget crisis of 2002-2003, our
4 staffing levels were cut by 41 positions. HCRC has a cap of 33
5 positions that's remained constant even though the original plan
6 in 1998 was to have that cap expand so that they could continue
7 to do the work that they do on the habeas side of things.

8 We have been able to, notwithstanding those cuts
9 to our budget, get the appellate backlog from 170 cases in 1998
10 down to about 70 cases. And we've done that with the private
11 bar.

12 The Habeas Corpus Resource Center, because of
13 their small size and the fact that they started up only ten
14 years ago, their backlog, the habeas backlog has ballooned in
15 light of the lack of resources to nearly 300 cases without
16 habeas counsel.

17 The State Public Defender's Office currently
18 represents 133 men and women on Death Row. It's the largest
19 population of Death Row inmates represented by a single agency
20 in the United States.

21 CHAIRMAN PERATA: How are you able to recruit and
22 maintain? Has that become more difficult as the circumstances
23 have continued?

24 MR. HERSEK: Well, as -- our recruitment has been
25 -- has been foreshortened by the cuts. When we lose the
26 position, we lose the position so we can't replace retiring
27 attorneys.

28 Nonetheless, in the years that we've had some

1 resources for recruitment, we've tried to replace older,
2 retiring attorneys with young blood, to put it crudely, younger
3 lawyers, and train them in-house.

4 What we've experienced both in the private bar
5 and in the agency setting is a drain of the folks who are doing
6 this work. And to prevent a brain drain, so to speak, we have
7 to be able to recruit new attorneys and get them trained by the
8 more experienced attorneys. And that's unfortunately cut the
9 number of cases we've been able to take. But I think in the
10 long run, it's -- it's a choice that will pay off in the
11 future.

12 CHAIRMAN PERATA: Any questions?

13 Anybody left?

14 If your family was here, they've gone.

15 MR. HERSEK: My domestic partner is hopefully
16 watching on the television.

17 CHAIRMAN PERATA: There you go. Probably the
18 same place that the other guy's wife was.

19 [Laughter.]

20 MR. HERSEK: I hope not.

21 CHAIRMAN PERATA: I congratulate you on the work
22 that you're doing. I know you're doing it under very difficult
23 circumstances. I wish you well.

24 Do we have a motion to approve?

25 SENATOR CEDILLO: So move.

26 CHAIRMAN PERATA: Call the roll.

27 SECRETARY WEBB: Cedillo.

28 SENATOR CEDILLO: Aye.

1 SECRETARY WEBB: Cedillo Aye. Dutton.
2 SENATOR DUTTON: Aye.
3 SECRETARY WEBB: Dutton Aye. Padilla.
4 SENATOR PADILLA: Aye.
5 SECRETARY WEBB: Padilla Aye. Battin.
6 SENATOR BATTIN: Aye.
7 SECRETARY WEBB: Battin Aye. Perata.
8 CHAIRMAN PERATA: Aye.
9 SECRETARY WEBB: Perata Aye. Five to zero.
10 CHAIRMAN PERATA: Congratulations.
11 MR. HERSEK: Thank you very much.

12 [Thereupon this portion of the
13 Senate Rules Committee hearing
14 was terminated at approximately
15 2:45 P.M.]

16 --ooOoo--
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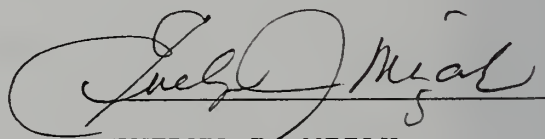
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of June, 2008.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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Senate Confirmation
Jeffrey D. Thompson
Director, Health Care Operations
California Department of Corrections and Rehabilitation
Responses to Senate Rules Committee Questions
May 27, 2008

Statement of Goals

Under the California Department of Corrections and Rehabilitation (CDCR), in 2005 health care administrative responsibilities were divided between two executive positions. One was assistant secretary, Office of Health Care Policy, responsible for long-range planning. The other job, director of the Division of Correctional Health Care Services, now held by Robin Dezember, was set up to oversee the delivery of required health care services to inmates at 33 prisons. Subsequently, the scope of those responsibilities was reduced in the wake of a federal court's appointment of a health care receiver to oversee medical care. As now constituted, the director's job is to administer the statewide mental health and dental delivery services, both also highly regulated by federal courts. The assistant secretary, according to the director, is now the number two position in the corrections health care system.

- 1. Please provide us with a brief statement of your goals as assistant secretary. What do you hope to accomplish during your tenure? How will you measure your success?**

Although the statutory position to which I am appointed is known as Assistant Secretary, Health Care Policy, the operating title is Director, Health Care Operations. This position reports to Robin Dezember, Chief Deputy Secretary, Division of Correctional Health Care Services (DCHCS) within the California Department of Corrections and Rehabilitation (CDCR). The Director, Health Care Operations serves as second in command within DCHCS and directly oversees Program Evaluation, Administrative Services, and six Regional Administrative units. Given the court mandated bifurcated California Correctional Health Care governance structure, my administrative direction centers upon supporting the delivery of dental and mental health services. On March 31, 2008, the Statewide Dental Director, Dental Services resigned and Mr. Dezember asked me to serve as the interim in the dental position.

I am pursuing three goals:

- Support CDCR and the California Prison Receivership (CPR) in advancing the reunification of health care administration in a manner that will provide quality inmate health care consistent with federal and state law;
- Advance correctional health care administrative options that recognize and address our state's need to resolve federal court demands in a fiscally responsible manner;
- Ensure that correctional health care service requirements contribute to and not constrain CDCR initiatives to place inmates in rehabilitation programs.

~~Senate Rules Committee~~

MAY 27 2008

~~Appointments~~

During my tenure, I hope to see significant accomplishments associated with each of these goals. These goals will likely be realized in increments. Indeed, in the first six months in this position, I have acted to:

- Improve communication by initiating weekly correctional health care leadership coordination meetings involving CPR and DCHCS;
- Initiate bi-weekly regional health care administrators meetings; expanded to include regional directors representing dental and mental health; and currently in the process of expanding to include CPR medical and nursing regional directors. Ultimately, I expect this groundwork to contribute to a long-term governance strategy in a reunified correctional health care organization.
- Facilitate the completion of the Dental Program Implementation Plan required by the *Perez v. Tilton* Stipulated Agreement. More importantly, the *Perez* Court-appointed representatives and plaintiffs deemed this plan acceptable.
- Facilitate the placement of inmates in CDCR rehabilitation programs outside the mainline prisons by exploring inmate dental care access options.

I will measure my success in terms of progress we see in establishing a reunified correctional health care organization, in resolving federal court cases, and in facilitating inmate access to CDCR rehabilitation programs with appropriate health care options available.

2. *You have a background in education as a high school principal and as a section program manager of a community college foundation. Please describe your qualifications for administering mental and dental health operations.*

I believe that the professional and community experiences over the last thirty years have clearly prepared me for the leadership role in which I now serve. I view this role as being more than one who just serves as a dental or mental health program administrator or manager. As Director, Health Care Operations, I serve as a key figure helping to construct a new vision and reality for correctional health care that better serves California's needs. In this regard, I view my lack of direct experience in CDCR as a potential asset since I do not come into this position with preconceptions or an agenda.

I believe that from my work as an educator and leader, I have developed a strong set of values essential to advancing positive change in a responsible manner. I recognize that one must always be willing to learn and grow in any life station. This means one must be willing to ask questions, test hypotheses, and develop supportable arguments and conclusions prior to acting.

As a high school principal, I served in a large high school with approximately 2,500 students and 300 employees working on two adjoining campuses in order to mitigate

overcrowding. I effectively addressed difficult student, parent and employee relation concerns daily in an environment that could be disrupted at any moment. I actively promoted the application of technology for learning and school administration and was recognized a school district leader in advancing the use of information technology.

I value every human being regardless of her or his condition and consider what I can do to serve each individual with whom I associate even in difficult situations. As a former high school administrator and now as an elected local school board member, I have made difficult decisions affecting students or employees. Regardless of the decision, I strive to treat the parties concerned with dignity, empathy and respect.

I promote open, honest, and positive communication that ideally advances the mutual interests of concerned parties. This also means I must be willing to solicit and consider feedback. Recently I participated in a DCHCS dental program chief dentists *Perez* training conference. One of the chief dentists approached me following the meeting and stated that he was initially skeptical about the leadership I could provide as interim state dental director, but after spending three days working with me he had come to value the frank open communication I employed in discussions. He concluded that he now had a high regard for the leadership I am providing.

I willingly consider new ideas or those that may be different from my own and encourage others to share their ideas. I embrace Apple Corporation's notion "Think Differently" when seeking to resolve problems or promote innovative solutions. Indeed, I was invited to serve as Vice President, Learning Programs in the Foundation for California Community Colleges because of my success establishing an innovative small high school on the San Joaquin Delta Community College campus whose mission is to support advancement of college underrepresented student populations to college admission and completion. As Vice President, Learning Programs in the Foundation for California Community Colleges, I established similar high schools supported by the Bill and Melinda Gates Foundation. This required secondary and community college partnerships to work together innovatively and collaboratively at levels not previously experienced.

Colleagues with whom I work for extended periods of time will testify to my ability to listen to seemingly disconnected arguments and ideas and then synthesize these down to ideas or solutions that make common sense. This ability will be essential in the role of Director, Health Care Operations.

In conclusion, I want to provide assurance that I will never presume to have the clinical knowledge or expertise required for practice in the health care disciplines I lead. However, I am confident that I can work with clinical professionals to ensure that the correctional health care team delivers services to inmates in a manner consistent with federal and state law.

3. *What training have you received to undertake your various administrative tasks, including your position as acting dental director? How often do you visit prisons and talk to field staff? What are the three most important things you have learned from your visits?*

I would characterize the training received as “baptism by fire” and “on the job” training. That being said, Chief Deputy Secretary, Robin Dezember, is my most immediate mentor. Robin had me shadow him for the first two to three months; and rarely does a day pass that we do not confer. In addition, I am actively building a support network to identify persons throughout CDCR, especially within DCHCS, to whom I can turn for information and guidance. Although I supervise and direct health care regional administrators, I also am constantly communicating with them to better understand daily operations and problems.

Regarding service as interim statewide dental director, I actively engage program staff in program governance issues and problem solving. I work very closely with Statewide Dental Deputy Director, Dr. Changsu Park, Dental Program Project Director, Richard Robinson, and the four regional dental program directors on a daily basis to ensure continuity in program direction. I enjoy the mentoring and support of the former statewide dental director, Dr. William Kuykendall, who now serves as Chief Dentist for Statewide Training. As noted earlier, I shared leadership for and actively participated in a DCHCS dental program four-day chief dentists’ training conducted this May. I participate in all dental program subcommittee meetings in both a leadership and learning role.

To date, I have visited four institutions: San Quentin State Prison (SQ); California Medical Facility (CMF); California State Prison (CSP), Solano; and CSP-Sacramento. When I visit, I ask the health care regional administrator and if visiting for dental business the statewide deputy dental director, to participate. In each case, I have found these visits to be very valuable. I have initiated each visit for an expressed purpose in addition to simply learning about the facility.

The visit to SQ focused on: 1) understanding the inmate reception center operation, especially in relation to dental screening; and 2) the application of imaging technology being piloted in order to expedite screening and potentially improve dental priority classification made by dentists. In addition, I was oriented to mental health operations by staff and met with top management including the warden. At CMF, I toured the new 64-bed mental health treatment center scheduled to open in June. The visit to CSP-Solano focused on solving housing challenges associated with inmates taking medications that require special monitoring when temperatures rise in housing units for prolonged periods. The visit to CSP-Sacramento provided me with the opportunity to observe one of the more effective dental programs, in addition to touring the facility.

The three most important lessons learned are:

1. Each institution presents unique conditions that must be factored into planning and problem solving at the headquarters level;
2. Institution staff serve as a very important resource and soliciting their input and support is essential;
3. Continuing to visit institutions and interact with field staff is essential to informed planning and decision making.
4. ***In a meeting with Senate staff, Mr. Dezember indicated that you serve as director of operations and your duties include program evaluation, oversight of regional administrators, and headquarters administration. Please describe what each of these functions entail and how you coordinate with Mr. Dezember. How do your duties differ from Mr. Dezember's?***

Let me first begin by distinguishing my duties from those of Mr. Dezember. As Director, Health Care Operations, I focus more on internal day-to-day program support and administrative operations. I serve as back up for Mr. Dezember when he is unavailable. As Chief Deputy Secretary, Mr. Dezember is highly engaged in external high-level relations typically associated with *Coleman* and *Perez* lawsuit issues or with coordination issues with *Plata* and the CPR. Mr. Dezember also serves as the primary DCHCS spokesperson before the Legislature and in meetings with other high-level executives at the agency level and Governor's Office. Mr. Dezember does frequently ask me to accompany him and participate in high-level discussions, especially more recently in relation to dental issues. In fact, I have represented DCHCS in meetings associated with *Perez* compliance and am developing a very positive working relationship with court experts assigned by the U.S. District Court Judge White.

The Program Evaluation Unit is responsible for developing integrated quality assurance framework, priorities, goals and performance measures, methods and activities for monitoring and evaluating services. This unit is currently in the development stage; however, the priority for the unit is to develop metrics using standardized tools to facilitate consistent and systematic review of care processes and provides decision support resources and reporting strategies to management. In addition, this unit will develop methods for efficient data collection, identify deficiencies, evaluate adherence to established policy and procedure, and implement process improvement strategies by providing training and consultation.

Regional administrators are responsible for directly supervising the health care managers; directing implementation of policy decisions and program standards for inmate health care; and managing, monitoring, and supporting mental health, dental, and medical field operations. They provide administrative support to the regional dental directors, regional mental health directors, regional directors of nursing, and regional

medical directors. In addition, they monitor compliance with court mandates, monitor staffing levels, meet and resolve union and labor issues, respond to staff grievances at the second level, initiate and evaluate Budget Change Proposals, and initiate requests for investigations.

Regional administrators also provide leadership and direction to their regions related to program and policy formulation and development, assist field staff in the decision making process, monitor staffing levels within all health care facilities in their regions, and oversee the budget for their regional operations.

In June 2007, the DCHCS began the process of restructuring after the separation from the Office of the Receiver. As a result of the separation, DCHCS assumed responsibility for the mental health and dental programs. Staff for the majority of the administrative functions was placed in the Office of the Receiver. For the past year, DCHCS has been building a new headquarters organization which provides administrative liaison and support services to DCHCS programs in the following areas:

Personnel Liaison and Support

This unit oversees the statewide hiring, monitoring, and compliance of the streamlined hiring processes for the mental health and dental programs and publishes Court-ordered monthly reports. It also serves as the liaison to Office of Human Resources on all personnel related matters, prepares requests for all personnel actions, and tracks and monitors employee performance and disciplinary actions.

Business Support Services

This unit negotiates and develops contracts, interagency agreements, and Memorandums of Understanding, prepares and tracks procurement requests for all goods and services. In addition, it manages property leasing issues including: office moves, telecommunications, building maintenance, furniture, and surplus property. This unit also is the liaison and coordinator for space planning and utilization including the Division's relocation to new space.

Fiscal Management Services

This unit defines and manages division/program budget, develops Budget Change Proposals and Finance Letters and provides support and guidance to central office and field staff on all fiscal matters.

Planning and Policy Development

This unit is the liaison to CDCR stakeholders on division strategic planning efforts and development and tracking of strategic planning initiatives. In addition, it coordinates with division programs on development and/or changes to policy and procedures. It also coordinates review and conducts analysis of proposed legislation, prepares legislative proposals, coordinates with program, implementation of enacted legislation or mandates of the Courts.

Facilities Development

This unit coordinates all institution mental health and dental program space related needs assessments, constructions projects (e.g. *Coleman* Court required treatment space needs), Statewide Dental Space Master Plan, in-fill programs, re-entry, Consolidated Care Centers, and the Health Facility Improvement Project with the Receiver's Office. It is also responsible for ensuring all health facilities requiring licensure, such as General Acute Care Hospitals, Correctional Treatment Centers, and Skilled Nursing Facilities obtain and retain applicable licenses.

Health Care Placement Unit

This unit provides statewide direct placement oversight for Mental Health Crisis Bed, Medical Inpatient Long-Term Care, and Dialysis patients. Health Care Placement Unit staff also provide field placement assistance on difficult to place cases, including Department of Mental Health (DMH), community hospital discharges, inpatient medical cases direct from delivering counties to CDCR, extradition, valley fever, outpatient, etc. It also provides field staff with technical assistance for health care placement issues and serves in a liaison capacity with staff from other Divisions, DMH, counties and community medical care providers.

Relationship to Federal Courts

In 2006 U.S. District Court Judge Thelton Henderson named Robert Sillen to directly operate and oversee improvements in prison medical services in the federal court case known as Plata v. Schwarzenegger. On January 23, 2008, Judge Henderson named Clark Kelso, professor of law at the McGeorge School of Law, as the new prison health care receiver.

Mental health services fall under a separate federal class action, known as Coleman v. Schwarzenegger. U.S. District Court Judge Lawrence Karlton also has named a special master to oversee improvements in mental health care. Another case, known as Perez v. Tilton, focuses on the need to improve dental care and is overseen by U.S. District Court Judge Jeffrey White. To avoid duplication, the judges directed

representatives of all three cases to coordinate their remedial activities at formal monthly meetings. The participants have also agreed to have the receiver manage areas the cases have in common, such as information technology. The ongoing cost of care as a result of these cases is more than \$1 billion a year.

5. *In his January 23, 2008, order naming a new health care receiver, Judge Henderson noted that one goal of the receiver must be to create “a system that must ultimately be transitioned back to the State of California’s control.” What progress has been made toward achieving this goal as early as possible?*

I share a commitment to the goal articulated by Judge Henderson. In the short time since Clark Kelso assumed the role as health care receiver, it is fair to say that communication between DCHCS and CPR has improved and coordination continues to improve. I have initiated activities that strengthen and improve:

- Health care regional administration, improving communication and collaboration addressing administration issues with dental and mental health directors to provide a stronger team approach in problem-solving and collaboration in working with each institution;
- Information technology, ensuring that the division is well represented in working with CPR and CDCR in solving numerous challenges related to data base and infrastructure systems; and
- Contracts, to ensure service contracts are cost-effective and appropriate and further to ensure adequate review by the respective disciplines related to dental, medical, mental health practitioner services (Registry).

These activities are small but important as we look forward toward our ultimate goal of transitioning all correctional health care back to the State of California.

6. *Please clarify your office’s relationship with representatives of these federal court cases, especially the medical receiver’s office?*

In accord with federal court direction, the Administrative Services Unit I oversee works closely with several key CPR units and managers: Director, *Plata* Support Division, Rich Kirkland; Director, Custody Support Services, Joe McGrath; Director of Human Resources, Kathy Stigall; and Computer Operations Director, Jamie Mangrum. DCHCS Administrative Services staff share and provide administrative oversight in areas of human resource development, contracts, information technology management and systems development, appeals, and facility planning and construction. In the coordination of work and planning, Mr. Kirkland and I meet on a reoccurring weekly basis, or more as necessary, to collaborate our work and implementation of upcoming projects. Additionally, Mr. Kirkland and I co-supervise the health care regional

administrators. I collaborate with other CPR directors, as needed, and the units I supervise work directly with CPR units on a daily basis.

7. *How do you coordinate with representatives of these cases? Do you attend monthly coordination meetings with Mr. Dezember?*

I believe my response to the above question applies to this question as well. I attend monthly court coordination meetings only when invited and have only attended one during my short tenure. However, as interim Statewide Dental Director, I am able to communicate directly and frequently with the *Perez* Court representatives, Jay Schulman and Joe Scalzo, in matters pertaining to the *Perez v Tilton* lawsuit. I have found this communication very advantageous in developing my understanding of correctional dental standards and program options. I have had the opportunity to travel with the Court representatives to assist in touring our dental facilities. Additionally, Mr. Dezember and I meet with them on a monthly basis, or more often as needed, to discuss issues and mapping program options surrounding the progress and resolution referencing the *Perez* lawsuit.

8. *Given the heavy involvement of the federal courts in prison health care, please describe your specific responsibilities in terms of dental and mental health care. How are your duties differentiated from those assigned by the federal courts to oversee dental and mental health issues?*

I am responsible for directing administrative support required to effectively operate the dental and mental health programs. I do not have direct oversight responsibilities that are ascribed to the court representatives in *Coleman* and *Perez* lawsuits. I see an overlap to the extent that we are seeking to provide quality dental and mental health services that satisfy constitutional requirements.

As interim Statewide Dental Director, I am more directly involved in directing activities associated with conditions of the *Perez* Stipulated Agreement.

9. *What hurdles does the department face in meeting a constitutional standard for mental health and dental care and phasing out federal court oversight?*

The Department faces challenges around building a common understanding about what it means to meet a constitutionally acceptable standard for dental and mental health care in the correctional community. For example, dental standards we associate with services provided by private practitioners differ from standards applicable to corrections, yet some would believe all inmates deserve dental care typically associated with that provided by private practitioners. Both dental and mental health programs are confronted with significant facilities issues that must be addressed. Given the

Department's historical emphasis on its custodial role, issues with inmate access to health care will continue to require attention.

- 10. *Have you studied and visited states that are regarded by corrections professionals as having the best dental and mental health services? If so, what lessons have you learned from examining the best practices in other states or the federal penal system?***

In the short time I have served, I have not been able to study or visit other states. I appreciate the suggestion though. I am focusing on understanding California's issues. I have, however, directed one of the administrative units reporting to me to research the practices of other states that have successfully left federal court oversight.

- 11. *The receiver's office plans to construct up to 5,000 medical and 5,000 mental health beds statewide. Are you involved in planning to meet the infrastructure needs—such as more clinical space—required to meet the mandates of the mental health and dental cases, and how is that being coordinated with the receiver's infrastructure plan? Was your office consulted on the location of these facilities?***

My office has not been consulted regarding the location of new clinical facilities the receiver plans. Mr. Dezember meets with the receiver and his Chief of Staff, Mr. Hagar regularly and we are hopeful that we can become more engaged in the planning soon.

Staffing

In his report of May 14, 2007, on prison overcrowding, Mr. Sillen said, "Many CDCR prisons are unable to sustain the basic delivery of medical, mental health, and dental services because of limited staffing (clinical and custody) and an overwhelming number of prisoner/patients who require care." He discussed a system of patient triage, saying "every day, many California prison wardens and health care managers make the difficult decision as to which of the class actions...they will fail to comply with because of staff shortages and patient loads."

- 12. *If we toured a prison mental health facility and dental clinic, what would be different compared to a year ago? Are more patients being seen? Has the quality of care improved, and how do you make that determination?***

Based upon progress reported in the hiring of dental and mental clinicians and support staff, I would conclude that more patients are being seen. Unfortunately, existing reporting tools are in sore need of improvement. I am doing what I can to actively promote and support the receiver's work for information technology infrastructure and

systems that will provide accurate information to managers and policymakers. Management information is most sorely lacking in the dental program. Because of this, I am sponsoring an internal project to provide a barebones information database that can operate for the next year or so once the receiver completes the health care Wide Area Network (WAN) and institutional Local Area Networks (LAN). This internal project is being developed using existing dental resources and expertise.

13. *Do you play a role in recruiting, hiring, or setting salaries for mental health and dental staff? If so, please explain. Would we see more staff at prisons today than a year ago?*

To date, I have not played a direct role in recruiting, hiring, or setting salaries for dental or mental health staff. However, within the DCHCS Administrative Services Unit, we have a Personnel Services Unit that is being staffed to support the coordination of these functions with CDCR human resources and CPR. You will see more staff at prisons today than a year ago based on position vacancy reports I have reviewed.

14. *An inmate has traditionally filed a medical appeal to protest a health care issue or request that a medical issue be reevaluated. Appeals are also filed about a wide range of custody issues not related to medical care. How are medical appeals being handled now that the receiver is overseeing medical services? Do you review appeals on dental and mental health matters?*

Currently, the medical appeals process is in transition from the CDCR appeals unit to the Receiver. DCHCS is establishing an appeals unit within the Administrative Services Unit I oversee. This unit will be phased-in as the medical appeals process transitions to the Receiver. All health care appeals will then be determined by the appropriate authority: medical, mental health or dental.

15. *If custody staff or other health care staff has a concern or complaint about medical staff, do you play a role in addressing it? Is it now the receiver's job to oversee allegations such as a hostile work environment or retaliation?*

DCHCS, CPR and CDCR human resources and legal staff closely coordinate the management of employee complaints and concerns. Staff concerns or complaints are initially addressed in accord with policies and procedures operating in the organizational setting in which the concern or complaint emanates. Institutional health care managers first address institutional staff concerns. regional administrators serve as the next level of review. For any given employee who is the object of a complaint, the hiring authority (CDCR or CPR) will take the lead. DCHCS and CPR collaborate to conduct reviews of complaints against dental, medical, and mental health clinicians when inmates are

allegedly endangered. DCHCS, CPR and CDCR human resources and legal staff closely coordinate the management of employee complaints and concerns.

16. *What role does your office play in evaluating and treating inmates with learning disorders? If your office is not responsible, who is supposed to evaluate these inmates?*

My office does not have any role associated with evaluating or treating inmates with learning disorders. Inmates are evaluated by custodial and health care staff when processed through initial reception center intake process. Based on the initial evaluation, additional testing and program options are planned.

Specifically, inmates committed to CDCR are screened for developmental disabilities by mental health staff in accordance with the *Clark* Remedial Plan. Once diagnosed, services are provided based on individual needs. Those needing the most care are placed at designated Developmental Disability Program (DDP) institutions where additional staff is available to assist the inmates. Those inmates assigned to education receive "pull-out" supplementary educational services through the DDP education and library staff.

Additionally, inmates with physical disabilities are provided services through the *Armstrong* Remedial Plan. Inmates with hearing and sight impairments are sent to designated DPP sites. DPP inmates who are assigned to school receive supplementary "pull-out" individualized assistance in accordance with the *Armstrong* Remedial Plan. Inmates with learning disabilities, as identified through the process described in the *Armstrong* Effective Communications policy memo approved by the *Armstrong* class member attorneys, are provided assistance for effectively communicating their needs. An inmate who is assigned to school and has been identified to receive individualized education will be provided appropriate support and services.

Disease Management

The federal receiver said in his fourth bimonthly report that prison overcrowding has increased the number and seriousness of infectious and communicable diseases, jeopardizing prisoners, staff, and the public.

17. *How does your office coordinate with the receiver to prevent the spread of infectious and communicable diseases?*

The receiver has re-established the Office of Public Health specifically for the management and prevention of the spread of infectious diseases. Coordination with the receiver is critical both at the policy and operational levels relative to prevention of such diseases as Methicillin-resistant *Staphylococcus aureus* (MRSA), Valley Fever,

Tuberculosis, etc. This office maintains coordination with the receiver's office through meetings and communications with the top medical executive. At the prison level, our staff works directly with the health care manager on prevention and management of infectious disease outbreaks which has a direct impact to the practice of dentistry. The Health Care Placement Unit within DCHCS is notified of any breakout of an infectious disease and provides immediate notification to the CDCR Secretary and DCHCS executive staff. This Unit also takes the necessary steps to isolate infected inmates and control transfers of non-infected locations.

The San Jose Mercury News of April 18 reported on "dozens if not hundreds" of female inmates who were being forced to have teeth pulled to be cleared of pre-existing health problems before gaining access to vocational training and drug rehab programs for non-violent offenders. The story reports that "just one badly damaged tooth will block them from entering a program," including the parenting skills course that allows them to live with their children in special housing. It was asserted that some women were getting 16-18 teeth pulled. CDCR informs the Rules Committee that the dental rules are the purview of your office.

18. Did you play a role in initiating this policy? If not, who did? Do you believe it is the most appropriate policy? Have any other approaches been examined that could assist women who might encounter a serious dental problem once enrolled in special programs?

I believe that it is unfair to suggest that this new story accurately depicts CDCR dental policy and I am concerned that someone in CDCR would make this claim. Edwin Garcia, the *San Jose Mercury News* reporter, interviewed four women participating in a Community Prisoner Mother Program located in Oakland. Mr. Garcia cited the experiences as related by two of the four inmates. All four inmates received dental screening, a Dental Priority Classification Code, and had dental treatment in accordance with existing CDCR Dental Policies and Procedures (P&P). The article depicts the CDCR Dental Program in a very negative light. However, the allegations are not supported by facts. The allegation that CDCR dentists just pull teeth is simply untrue and is an affront to dental professionals who abide by the same professional oath as dentists in private practice. The CDCR P&P have been approved by the *Perez* Court dental experts and the Prison Law Office representing plaintiffs. By CDCR P&P, services to restore teeth and rehabilitate an inmate's oral conditions are available for the dental staff to provide. Dr. Changsu Park, Statewide Dental Deputy Director and the current senior dentist states, "It would be a severe deviation from standard of care to extract teeth that have not been classified as non-restorable."

The CDCR dental program does not establish eligibility for custody programs. The dental program's role is to assign a dental priority classification for care and to initiate a treatment plan addressing dental needs in accordance with diagnosed needs and

CDCR Dental P&P. In fact, the dental program is only a small part of a very complex classification matrix for eligibility for programs. Correctional Counselors determine eligibility for placement in minimum custody programs like the Community Prison Mother Program and the Family Foundations Program. Access to dental care may vary from program to program. Per the Correctional Counselor III from the Oakland facility, there is a mobile medical unit that comes by once a week; dental is not included. However, a registered nurse is available for assessment of dental issues. In addition, the facility has a list of health care and dental providers and clinics that is available for the inmates and their continued care. Transportation to the clinics is coordinated through the facility staff. At other facilities, mainline hub prisons provide inmate dental care.

Regardless of what has occurred in the past, I have a strong commitment to work with colleagues in CDCR to review CDCR policies, procedures, and practices to identify strategies that maximize access to community-based programs for all potentially eligible inmates. To date, I have met individually with Kathy Jett, Undersecretary Programs, Suzan L. Hubbard, Director, Division of Adult Institutions, Wendy Still, Associate Director, Female Offender Programs and Services, and several dental program staff to develop a clear understanding of issues surrounding access to community-based programs. Suzan L. Hubbard and I will jointly establish a CDCR team to resolve access issues. Please know that this is a high priority.

Parolees

CDCR oversees more than 120,000 parolees, many of whom have mental health needs and who become homeless.

19. *If this is the responsibility of the parole division, how does your office help prepare offenders with mental health needs for life outside of prison?*

This office is not directly involved with preparing offenders with mental health needs for life outside of the institution. The responsibility of pre-release planning lies with the Division of Adult Paroles (DAPO), however the DCHCS mental health staff work collaboratively with DAPO to establish a case management plan, which includes referrals to Parole Outpatient Clinics to assist the inmate's transition back to the community.

DANIEL W. RICHARDS
President
Corporate Services



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June 5, 2008

Senator Don Perata
Senate Rule Committee, Chairman
State Capitol, Room 420
Sacramento, Ca 95814-4900

Dear Senator Perata:

Thank you for the opportunity to respond to your questions regarding my appointment to the California Fish and Game Commission. Below are my responses to your letter dated May 23, 2008.

STATEMENT OF GOALS

1. What do you hope to accomplish during your tenure as a member of the Fish and Game Commission? How will you measure your success?
 - I will advocate for increased financial resources for the enforcement of our hunting and fishing regulations including equitable pay for F&G Wardens and additional funding for more Wardens. I think we should strive to increase our staffing levels at both the Commission and Department levels. This public trust we hold cannot be done adequately at the current staffing levels. I recognize the budget crisis we are currently in but I also recognize the crisis our resources are in and if we do not protect, manage and grow them right now, we stand to have losses that we may never be able to recover.
2. What do you see are the top five challenges facing the Fish and Game Commission? How do you propose to meet these challenges?
 - Having been the President of the San Bernardino County Fish and Game Commission for the last 2 years I recognize many of the same challenges facing us are facing the State Fish and Game Commission but on a far larger scale. I appreciate and am amazed at the size and scope of the multiple issues dealing with our coastal waters and other marine areas. We are fortunate to have both current Commissioners and staff members

Senate Rules Committee

Each Office is Independently Owned and Operated.

JUN 09 2008

Appointments

at the Department who are truly experts in this field and I look forward to working with them and their leadership on this ultra important issue. At the same time, I think it is a real challenge for the Commission and the Department to enforce the existing laws and regulations with such a limited staff and budget. Both are unrealistically out of balance with the true need.

- We need the cooperation of many other local, state and federal agencies to protect habitat and provide appropriate levels of fishing and hunting opportunities. In San Bernardino County I have met with the Presiding Judge of the Superior Court and the District Attorney to remind them of the importance of enforcement of the citations and criminal cases brought forward by the Wardens. We need their commitment to the process as well in order for the enforcement actions to be effective. I have already suggested we do outreach to every Presiding Judge and DA in California on this very issue. I believe our current Commission and the F&G Department are in full support of that effort.
- I am interested in our Aquaculture Program and intend to make sure we continue to encourage the use of our under water resources and at the same time make sure that the stakeholders are paying appropriate revenues to the Department for the use of this resource. My interest here is not only in lease dollars but also in research access to the aquaculture fields and any other appropriate areas that can benefit the ecosystem. One area I want to research and see if we can expand on is the inclusion of our State Education system and see if they have interest in reviewing our Aquaculture program. The more young people we have focusing on these opportunities the better our chances for long term sustainability and growth of this unique resource.
- I want to make sure we are open to all stakeholders on the many, many issues we face. I will work diligently to listen to anyone who feels they have some stake in a decision we are reviewing. I think it is the one reason the MLPA process is generally well received and I want to make sure we continue that type of outreach to everyone on significant issues we will be facing.
- I intend to educate myself from as many credible sources as I can. The great thing about this appointment is you can be on the Commission long enough to actually get proficient in a lot of areas. I will commit to making the appropriate outreach to all sides on issues so that the decisions made by our Commission are well informed, prudent, and fact and science based.

MISSION

3. How would you characterize the commission's relationship to the department? Do you exercise your authority to formulate policy for the department? Do you follow through to determine if policy has been implemented?

- Since my time on the Commission, I have witnessed a positive working relationship between the Department and the Commission. I think Don Koch is a terrific appointment and his long term relationship with John Carlson is an added benefit for both the Commission and Department. While I understand the Commission has the responsibility to set policy and develop regulations, I intend to work in a collaborative approach; one which takes into account public input, Department and Commission staff experience and Commission Member's views. I would be very disappointed if our relationship was confrontational or not collaborative. This responsibility we are charged with is far too important to not figure out a good way of working together. I see no reason that cannot happen.

I am still learning the process by which I can impact policy changes at the Department, but I will certainly follow through on any policy changes the Commission requires of the Department that I personally propose and as mentioned earlier, I also intend to make sure that the policy we do implement is supported by and in most cases developed jointly by the Department & Commission Staff.

4. As stewards of California's fish and wildlife resources, the commission operates with a dual role of providing hunting and fishing opportunities and protecting the state's public trust resources of native plants, fish and wildlife. How do you balance conflicts that arise from the dual roles and make decisions? Does the commission ask for an opportunity to consult with the department in the development of budget and programming priorities and, if so how does the department respond?

- One of the purposes of the Commission is to regulate the taking of fish and game so that those resources are properly managed and will continue to be enjoyed by future generations. As an avid sportsman, I understand, as do most sportsmen, that a healthy ecosystem means healthy fishing and hunting opportunities. Our recent decision on the lead ban in Condor ranges was appropriate and the very unfortunate shutting down of this year's Salmon season equally appropriate. These types of issues require good science, clear and objective decision making and also a commitment to those most affected that when appropriate, we will revisit those decisions to determine their current viability and if appropriate, adjust the decision. This is why the Commission adjusts the levels of game tags and quotas yearly based on the scientific data of how much the specific fishing

and hunting habitat can sustain. This year that number was a zero for Salmon. Hopefully the decision will also mean a healthy Salmon run in the future and better opportunities for the Salmon sport fishing and commercial industries. My goal is to improve the management of the game ecosystems to the point where we don't have the conflicts between habitat preservation and fishing and hunting opportunities. I fully understand that this will be challenging. This will not be an easy task given the size and population pressures exerted on our habitat resources throughout the state in particular the illegal pressure that is ever growing and damaging. I intend to seek greater penalties for offenders as well as greater resources for our enforcement personnel to protect the resources. We cannot continue to allow the wholesale commercialization of the resources by illegal activity. It must stop.

To date I have not had any formal conversations with the department regarding the development of budget priorities. I know this issue is important and expect to have meaningful dialogue with the Department on how we can find mutual solutions to the budgetary problems facing both the Commission and Department. Since the Commission is tasked with setting policy, it is my expectation these discussions will prove fruitful for all involved.

5. If there is differing testimony between the scientific community and those who spend time fishing or hunting, how do you resolve the conflict? What sources of information do you depend on for advice?
 - The Commission's decision making must be made on the best available science. I would expect staff to provide Commissioners the most accepted, peer-reviewed science and research accessible at the time. Fortunately, California is blessed with a remarkable higher education system that I am certain we can turn to for research and scientific data on habitat, fisheries and game species as well as various stakeholder groups. At the same time I will seek to listen to stakeholders in the field to gather data from them that we can sample against the science to see if they are similar or not. When inevitable conflicts appear, we should always ere on the side of science.
6. Does the commission examine ways to improve the ability of the department to fund its public trust responsibilities? If so, what have you recommended?
 - I see very real and unlimited possibilities for the state to form partnerships with private foundations and conservation organizations to restore and enhance existing habitat and make it more accessible and suitable for public enjoyment. Many of the stakeholder groups are very well funded and I think, along with the traditional legislative process, all funding alternatives should be looked at especially with the current fiscal problems

facing the state. Whatever partnerships or funding sources are developed, they must be made with an eye towards the long term sustainability of our resources. It makes little fiscal or environmental sense for the state to take on the responsibility for any new habitat that it cannot properly maintain, control, enhance or provide enforcement of our game laws and regulations.

HUNTING AND FISH LICENSES DECLINE

7. What responses should the commission consider in response to this trend?

- I'm not sure there is any technical data on this troubling trend, although we have had a very slight increase in licenses the past 2 years. I believe one of the biggest reasons for the overall decline is the breakdown of the family unit. Hunting and fishing were, for so very long, an important part of the fabric of our country. It still is in many parts of the country, but not like it was – and in particular, it's not in California. We have a lot of options for "entertainment" in California and young people do not experience the outdoors as much as they should or as much as they once did. To address this problem, I think we need to look at ways to provide classroom education as well as opportunities for urban students to experience wildlife firsthand. Only then will they begin to understand the importance of sustaining and enhancing wildlife habitat, not only for themselves but for future generations.

A second reason for this general decline is the overall decline in the ecosystem health and the general decline of public access to game habitat. The best way to address these problems is to do a better job of managing the public lands we have which includes increasing enforcement against poachers and other illegal uses of the land. At the same time we must also encourage proper use of the resources in the state and seek ways to encourage new users for the resources.

DECLINE IN OCEAN RESOURCES

8. What approaches would you like to see the commission undertake to address the health of marine life and oceans?

- The Commission should treat the marine ecosystems as it does those on land using the best available science. That is, the goal of the Commission should be to protect and enhance habitat for sustainable yields so that future generations may also benefit from the resource. I wholeheartedly endorse the work of the MLPA committee and look forward to adopting their recommendations in the near future. There is no room for us to make inappropriate compromises for short term gain vs. long term pain of loss

of habitat and marine life. I will work along with my fellow Commissioners to do the best we can to not let that happen.

9. What specific policies, programs, or actions do you believe should be taken to address the decline of our ocean resources?

- The Commission should champion the natural state of all California's resources, including her waters, and to the extent possible, that they stay natural and healthy for the benefit of the resource and those who enjoy it. The marine Resources Sub-Committee, chaired and reenergized by Commissioner Sutton, is engaged in that activity and I will support their work.

10. How would these approaches be balanced with fisheries management? What changes, if any, should there be in the process for developing policies to protect key species, to address destructive fishing practices, and ensure commercial and recreations marine activities for future generations?

- This is a very complex problem with varied sources of destruction and, depending on who you are taking to, various solutions. I intend to follow closely the recommendations of the marine Resources Sub-Committee, the Commission Staff and Department personnel. Science must lead the decision making process for the long term sustainability. Again, having said that, I will always be looking at making the resources of the State available to our Sportsmen and commercial operations so long as they are not damaging the resources. Sustainability, maintenance and enhancement should always lead the conversation but use of the resources should not be unduly hindered or legislated simply to keep our citizens from enjoying them. Science, again, should dictate the decisions.

11. Under the state of emergency proclamation over critical declines in Sacramento River Fall Run Chinook Salmon, the commission was directed to report to the governor on further actions necessary to ensure protection of salmon fisheries and the economic livelihood of the fishery participants and local communities. What responses should the commission be considering to address this problem and surprising plunge in Chinook salmon spawning runs and declining Coho salmon resources? Why has the decline come as such a surprise?

- My understanding on this issue so far is that there are numerous reasons for the decline in the population and like so many other issues we face, various camps prefer various "reasons". The three major factors are ocean conditions, pollution in the Delta, and diversion of water from the Delta. However, I believe there is still a significant amount of research being done to understand why this happened and why it was such a "surprise" to many in the resource management field. I anticipate the Commission to use this research to do what it can within its authority to address the causes

of the decline. One thing is for sure, if we do not increase our enforcement staffing levels and budgets, revisit the current penalties for violations (currently 99% of the crimes are listed as misdemeanors) it won't make much difference on what regulations and laws we enact. The commercialization and illegal taking of Salmon is on a steep increase and we must address this issue if we are to be successful in our desire to have a long term recovery of the Salmon fishery.

ENFORCEMENT

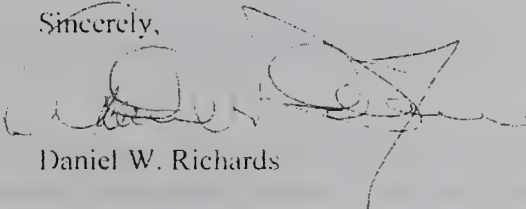
12. Given the current budget constraints, how will the commission be addressing enforcement needs?

- As I outlined in my goals, addressing the inequitable pay for Fish and Game Wardens is critical if we expect to keep experienced Wardens and have any hope of attracting new Wardens to enforce our fish and game laws. The Wardens we have now do a tremendous job, but we cannot expect such a limited number to effectively patrol the entire state of California and protect our wildlife habitat. Also, I've discussed with the Commission that we start looking at the penalties we have in place as deterrents. Almost all of the cases are prosecuted as misdemeanors and I think we've got to revisit this and see if that is appropriate. We're spending hundreds of thousands of dollars on these cases and currently, most of them are fines that many of our Wardens and staffers believe the criminals find to be "a simple cost of doing business". I think stronger deterrents must be considered.

As I stated in my response to question 6, we should explore other funding alternatives that will allow us to restore and enhance existing habitat and make it suitable for enhanced public enjoyment while also providing funding for enlargement of our Warden force. Currently the Commission is looking into further research on whether this type of funding could be used for enforcement purposes.

Again I would like to thank you for giving me the opportunity to respond to your questions. If you have any additional questions please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Daniel W. Richards', with a large, sweeping flourish extending from the end of the signature.

Daniel W. Richards

ANSWERS TO QUESTIONS SUBMITTED FOR
JUNE 11, 2008, SENATE RULES CONFIRMATION HEARING
(Michael J. Hersek, State Public Defender)

GOALS

Question 1: What are your goals and objectives as the State Public Defender? What have been your most significant accomplishments since you began serving as the State Public Defender in 2004? How do you measure success?

Answer: In 1998, the Legislature turned to the Office of the State Public Defender (hereafter "OSPD") to resolve a then-growing problem: at that time, approximately 170 men and women on death row were awaiting appointment of appellate counsel. The 1998 legislation refocused OSPD's mission to death penalty appeals, and increased the size of the agency to 128 positions.

Over the last 10 years, OSPD and the private defense bar have reduced the backlog of men on death row awaiting appointment of counsel by more than half. Today, there are about 80 men on the row awaiting appointment of counsel. During this same period, however, OSPD suffered a series of deep cuts to its budget and staff, which have limited OSPD's ability to further reduce the backlog. Indeed, since 2002, OSPD has lost 41 of the 128 positions by the 1998 legislation. Moreover, In light of the current fiscal crisis, OSPD is preparing for further staff and budget reductions.

Within this context, it is our immediate objective to work with the Legislature and Department of Finance to preserve the staffing and litigation resources necessary for OSPD to meet our constitutional obligations of effective and vigorous advocacy to our *existing* death row clients.

Beyond our immediate goal of protecting our ability to carry out our mission during the current fiscal crisis, our overarching goal and objective remains consonant with our agency's single mission: To provide excellent and cost-effective representation to our current clients, while at the same time accepting new appointments from the California Supreme Court as quickly as our resources allow.

Our most significant accomplishments since June 2004 include the following:

1. Reforming OSPD's Internal Structure. Since June 2004, we have altered our internal structure in several successful ways. First, we have increased the number of Senior Deputies functioning as "team leaders". (Every attorney at OSPD is assigned to a team, which has been the case for at least 15 years.) Team leaders serve both as supervisors and

Senate Rules Committee

MAY 12 2008

mentors for our less experienced Deputies. So, as a result of this change, the agency went from having approximately 1 supervisor/mentor for approximately every 12 attorneys (which resulted in little more than perfunctory case supervision), to having 1 supervisor/mentor for every 3 less experienced capital appellate attorneys (which, we believe, has resulted in much improved case supervision and better overall work product).¹ Second, we created a Chief Deputy position. The Chief Deputy serves as the agency's litigation coordinator, and has increased the agency's efficiency and its ability to speak with "one voice" in our litigation. Third, we created a Director of Legal Training position. The training Director has coordinated excellent in-house training events that have added to the professionalism and overall competency of our staff. Fourth and finally, we appointed an attorney to serve as our Legal Analyst (paralegal) Supervisor, which has resulted in an increase in the competency and efficiency of our paralegal staff, as well as an increase in the communication and cooperation between our attorney and paralegal units.²

2. Training and Staff Development. As mentioned, OSPD now has a Director of Legal Training who conducts formal in-house training for its attorneys. The Director of Legal Training has also coordinated successful state-wide capital defense trainings with California Appellate Project and the Habeas Corpus Resource Center. In addition, we have created a "Court of Appeals Unit" led by our Chief Deputy.³ Due to the graying of our current staff, we have made significant efforts to expand the pool of lawyers qualified to accept capital cases. We have done this by hiring bright new but inexperienced lawyers, and providing them the training they need to become death-case qualified by working in our Court of Appeals Unit on non-death penalty cases.

3. Improved Moral, and New Cooperation with OSPD's Sister Agencies. In early 2004, moral in the Sacramento branch of OSPD was at an all-time low. Since then, we have made significant progress in improving the moral in that office. Our efforts in this regard have increased the cooperation between the two offices, resulted in greater efficiency, and improved the overall performance of that office. Similarly,

¹It should be noted that we accomplished this expansion of supervision/mentoring by taking advantage of the agency's existing Senior Deputy staff. Also, it should be noted that OSPD's team leaders carry a full case load along with their supervisory/mentoring duties.

²While our Chief Deputy and Legal Training Director have modified case loads, our Legal Analyst Supervisor carries a full case load.

³Although OSPD's principal mission is to represent men and women in their death penalty appeals to the California Supreme Court, OSPD is statutorily authorized to accept appointments in Court of Appeal cases (non-death penalty cases) for the purpose of training.

in early 2004, OSPD's relationships with its sister agencies, the California Appellate Project and the Habeas Corpus Resource Center, were noticeably strained. Since then, we have renewed our historically positive relationships with CAP and HCRC, which has resulted in an new era of cooperation and resource sharing to the benefit of OSPD's staff and clients.

4. Information Systems. In 2004, most of OSPD's internal data systems (e.g., the agency's electronic brief bank) were virtually non-functional and the attorney staff relied largely on brief banks of other agencies. Since then, we have appointed a Director of Legal Resources, who has – with the assistance of our able IT staff – created a research directory and digital brief bank that makes the agency's wealth of legal materials readily accessible – electronically or in hard copy – to staff.⁴ In addition, while OSPD permits attorneys to telecommute two days a week, most of the agency's information systems are currently unavailable to telecommuters. I am currently assessing OSPD's internal data systems, and plan on implementing a method that ensures OSPD-generated data is easily accessible to staff, and ultimately to the private capital defense bar.

It is not easy for public defender offices to “measure success”; our results in court often have little to do with how well the case is actually litigated, and unlike private lawyers, we do not chose our clients based on the strength of their cases. At OSPD, we consider numerous factors – both objective and subjective – when evaluating whether the agency and its staff are performing successfully and meeting their goals. These factors include: the agency's case-load and work-flow averages; the quality of the agency's briefing and oral advocacy; the consistency with which our deputies meet internal and court-imposed deadlines; and the feedback we receive from staff, our clients, and the courts (who depend on the high quality of our work).

Question 2: As a result of natural turnover and an upcoming wave of retirements, many state agencies are facing or will soon face serious staff shortages. Please comment on the extent of this problem at the Office of the State Public Defender (OSPD). Does OSPD have a personnel succession plan in place? If yes, what are the key components?

Answer: We estimate that OSPD will lose 25-30% of its staff to retirement in the next 7 years. We are currently working to put a personnel succession plan in place. (On April 15, 2008, our Chief Administrator attended a state-wide training on this exact subject.) Although we do not yet have an official succession plan in place, any challenges OSPD faces in hiring and recruiting are not insurmountable. In anticipation of this wave of retirements we have adopted a hiring practice that attempts to recruit both new attorneys wanting a career in criminal defense (who we can train through in our Court of Appeals Unit – see Question 1, part 2 above) and

⁴ Our Resources Director carries a full case load.

more experienced attorneys, who are already death-case qualified and who will protect the agency from the negative effects of losing a disproportionate number of highly skilled staff to retirements.

BUDGET ISSUES

Question 3: How do you prioritize OSPD's functions given current budget realities?

Answer: Because OSPD's singular mission is to provide legal representation to men and women on death row, we first target any required budget and staffing reductions at non-litigation operating expenses and non-attorney staff. Unfortunately, prior budget cuts and staffing reductions have resulted in our inability to cut much more from our non-litigating operating expenses and non-attorney staff. (For example, prior cuts have left us with a secretary to attorney ratio of about 1 secretary for every 10 attorneys.) Accordingly, since first learning of the current budget crisis in October 2007, we chose not to fill new attorney vacancies in anticipation of having to cut some existing attorney positions, in addition to further reductions to non-attorney staff and non-litigation operating expenses.

ATTORNEY TRAINING

Question 4: In your 2004 confirmation hearing, you indicated there is a balance between bringing in experienced attorneys to handle capital cases and hiring and training young lawyers to help them develop expertise in the area. How have you handled the challenges of maintaining this balance?

Answer: OSPD tries to balance the hiring of experienced lawyers who are already qualified to handle capital appeals, with the hiring of young/inexperienced lawyers for several reasons. First, hiring experienced lawyers from the private defense bar reduces the number of lawyers in private practice willing and able to accept an appointment in a capital case. Second, hiring and training young/inexperienced attorneys actually increases the number of attorneys doing this work, which is particularly critical as a large portion of the existing criminal defense bar – both at OSPD and in the private sector – continues to gray and approach retirement.

We have met the challenge of maintaining this balance by forming a Court of Appeals Unit for the sole purpose of training our young/inexperienced attorney hires to make them death-case qualified. Since 2004, about half of the attorneys we hired were inexperienced attorneys who have entered our Court of Appeal Unit for training (see question 1, part 2 above); the other half were highly skilled, death-case qualified attorneys. Of the five young lawyers hired and placed in the Court of Appeal Unit, two have matriculated to capital casework and are now practicing as assisted counsel; two are completing their training; and one left the agency. It is our view that this program has been very successful, and we look forward to continuing it and further expanding the pool of attorneys willing and

able to do this work.

Question 5: What steps are you taking to ensure that your attorneys are adequately trained and prepared to handle capital cases?

Answer: As discussed in greater detail above, OSPD now has a Director of Legal Training, who provides regular in-house trainings on important and developing capital litigation issues. The Director of Legal Training also coordinates staff attendance at trainings and seminars conducted by outside entities. In addition, in 2004 we established a Court of Appeal Unit, where our most experienced litigators train and mentor our young/inexperienced new hires with the goal of making them death-case eligible. Moreover, each monthly team meeting has a training component, during which the team discusses and analyzes a pending legal issue or problem.

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 16, 2008

Patrick Johnston, Member

Dear Senator Johnston:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment as a member of the Bay-Delta Authority on June 11, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by June 2, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by June 2nd.

Goals

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Bay-Delta Authority? How will you measure your success?*

Bay Delta Authority

The Bay-Delta Authority was designed to oversee the implementation of the CALFED Bay-Delta Program for the 25 state and federal agencies responsible for improving the quality and reliability of California's water supplies and restoring the Bay-Delta ecosystem.

The Bay-Delta Authority was created by the California Bay-Delta Authority Act of 2003. It is charged with providing accountability, ensuring balanced implementation, tracking and assessing program progress, using sound science, assuring public involvement and outreach, and coordinating and integrating related government programs.

Senate Rules Committee

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Appointments

In 2006 the Legislature moved the administration of the programs under the Bay-Delta Authority Act to the Resources Agency. The authority has not met for quite a while because of the inability to establish a quorum and that the authority has little, if any, business that comes before it.

The Resources Agency wants to see the authority continue in the near future in case a vote is needed to authorize any contracts the agency may enter into regarding Bay-Delta programs. In the longer run it is expected that the governance of Bay-Delta issues may be resolved when the Delta Vision Blue Ribbon Task Force submits its strategic plan and implementation strategies for the Bay-Delta at the end of 2008.

2. *What role do you see for the Bay-Delta Authority in the near future?*
3. *How should the governance of Bay-Delta issues be structured in the future?*

Bay-Delta Fisheries

The Delta serves as a water source for 5 million acres of farmland and 22 million people. Water-export pumps south of the Delta have repeatedly killed fish. However, since 2000 more fish have been killed at the pumps during the winter season (November through March), including threatened and endangered species, than in previous years. According to the federal EPA, this coincides with a 30 percent increase in water being pumped south during those months.

The number of Delta smelt, a species considered to be a bellweather of environmental conditions in the Delta, have fallen to historic lows, so too have striped bass, threadfin shad, and longfin smelt, as well as an important variety of zooplankton.

4. *Despite CALFED program efforts, critical Delta fish populations continue to decline. What factors do you believe are contributing to this decline?*

Delta Levees

Another major issue for the Delta is its fragile levee system. Rising sea levels and subsidence of farmed Delta islands, which are already below sea level, could lead to a series of breaches. Large-scale levee failure from flooding, high winds, or earthquakes would be a disaster for farmers, the water supply, and Delta residents. In a presentation to a Senate committee in November 2005, the Department of Water Resources indicated that a massive levee failure could lead to \$30 billion in economic losses and a loss of 30,000 jobs.

Patrick Johnston
May 16, 2008
Page 3

5. *In your view, what is the threat to the Delta levees? What type of repair work or strengthening should be done?*
6. *Can all the Delta islands be protected, or should some revert to marshlands?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:KW

cc: Bay-Delta Authority

PATRICK JOHNSTON-Bay Delta Authority

1. I have served on Bay-Delta Authority as public member from the Delta since the passage of the Act in 2003. At present membership in BDA makes me a member of the Delta Protection Commission.

While BDA is largely dormant, DPC is very active in defending agriculture, wildlife habitat and recreation as enumerated in the Delta Protection Act of 1992. The DPC should be measured by its success in rejecting urbanization in the Primary Zone of the Delta.

2. BDA awaits a transition to a more effective governance structure.

BDA did not work because the federal government declined to allow its representatives to participate as equals with state representatives and it made important management decisions (e.g. renewal of Wetlands contracts) without state participation.

3. The Delta should have a small governing body made up of smart generalists appointed by the Governor for staggered terms and subject to confirmation by the State Senate. It should be restricted by the twin goals placed in the Constitution of environmental protection and water supply. It should decide levels of water export and it should be charged with protection of Delta Islands from urbanization. The Delta Protection Commission should continue as a planning body and possibly should serve as a conservancy to invest in projects that improve the Delta for agriculture, wildlife habitat, and recreation.

4. Excessive water exports, urban and agriculture runoff and ammonia from Sacramento's sewer treatment system.

5. The fragility of Delta levees is well documented. Causes include sandy composition, earthquake risk, rise in sea levels and snowpack runoff influenced by global warming, hydrostatic pressure, and erosion from boats.

Levees should be strengthened, but no new urban development permitted. Setback levees should be built where possible.

6. Yes.

Senate Rules Committee

JUN 03 2008

Appointments

June 2, 2008

The Honorable Don Perata
President pro Tempore
California State Senate
Sacramento, CA 94814

Senate Rules Committee

JUN 02 2008

Dear President pro Tempore Perata:

Appointments

This letter is in response to your letter of May 16, 2008 relating to the confirmation hearing by the Senate Rules Committee for my reappointment to the Building Standards Commission. The hearing is to be held on June 11, 2008.

The following is the list of the eight questions you asked and my response:

1. Please provide a brief statement of your accomplishments as a member of the Building Standards Commission (Commission).

I think the greatest accomplishment of this Commission is the adoption and publication of a full set of new building codes along with necessary state amendments in record time.

This was done in a twelve month period rather than a twenty four to thirty six month period which has been the norm. This accomplishment was made possible by a lot of extra work by the Commission, the Commission advisory committees, affected state agencies, considerable support and cooperation from all of the construction industry and other stakeholders, excellent leadership by the Commission chair person and especially the hard work of the Commission staff.

All of the participants are very proud of this accomplishment.

I know that the adoption of these new codes is not an individual accomplishment and it is difficult for me to take credit for the actions of a Commission that has worked so well together. I serve on four committees for the Commission and chair the Code Change Committee and the new Green Code Committee, which I was appointed to late last year.

2. Please tell us about your goals as a member of the commission. What do you hope to accomplish during your tenure?

My goal continues to be the development and adoption of the best set of building codes for the citizens of California. To do this I need, along with the rest of the Commissioners, to attend the Commission meetings and assigned committee meetings. It is also necessary to review the proposed codes or code changes along with all of the relevant documentation prior to the meeting. Then listen to all of the information

provided by state agencies and the public at the Commission meeting prior to making a decision and voting.

3. What do you believe are the most pressing issues that the BSC is facing currently?

New technology and designs that will improve the seismic safety, accessibility and sustainability of buildings needs to be continually reviewed and added to the code. The Commission and staff need to have the proper resources to do this in a timely manner to ensure California remains the leader in the nation in developing standards to protect public health and safety and the environment.

4. Why is BSC considering proposed regulations that are mostly optional rather than required minimal standards?

The proposed Green Building Standards Code being primarily optional for the first two years will allow builders to voluntarily build to these standards. It will also permit the whole construction industry which includes developers, contractors, architects, engineers and inspectors to prepare and train their people before the Green Building Code becomes mandatory. Thus the initial, voluntary nature of the code will provide for not only a better code but also for better enforcement when the code becomes mandatory. With the publication of the 2010 code package the Green Building Standards Code will be mandatory.

5. What would you recommend to ensure that green building regulations provide minimal standards and the standards themselves do not become a source for green washing projects?

The voluntary 2008 Green Building Code is a specific set of green building code requirements. They are intended to be adopted this year and will continue to be improved over the next two years. This code with all necessary changes will become the mandatory 2010 Green Building Code. The 2010 Code will then be updated annually to assure that the highest possible standards are maintained.

With the environmental concerns expressed by the Legislature and the Governor, I don't see how the requirements to improve the sustainability of buildings could be lowered. The negative effects of building and building construction on the environment require that the highest standards must be maintained.

6. Do you believe the proposed BSC regulations prevent "greener" standards at the local level?

Many local jurisdictions have already taken advantage of the provisions in statute as well as Title 24 that permits changes to the California Building Codes. Any changes made are required to be a higher standard than the California Building Codes to ensure public

health and safety and building efficiency and, now, environmentally responsible design and construction.

7. What is the anticipated time frame for BSC to review and approve this proposal? After DWR submits its proposal to BSC, will the public have an opportunity to submit comments to BSC on the proposal?

DWR has not submitted their proposed code changes to the Building Standards Commission as yet. It is my understanding that this will be done around the first of next year. When DWR does submit their proposed building standards they will be processed by the Commission as expeditiously as possible.

All of the Commission meetings, including committee meetings, are public and announced well in advance so that all interested parties can participate.

8. What factors will you consider when the proposal comes before the BSC for adoption and approval?

The Commission will base its review and approval on the requirements set in the Health and Safety Code Section 18930 which sets a nine point criteria that must be followed.

If you have any further questions or you need more information please contact me by phone and I will provide it as soon as possible. My telephone number is 510.537.2314.

Thank you in advance for your consideration.

Sincerely,

James W. Barthman

Nettie Sabelhaus,
Senate Rules Committee Appointments' Director
Room 420 State Capitol
Sacramento, CA 95814

1. Please provide a brief statement of your accomplishments as a member of the Building Standards Commission:

It is an honor to continue to serve on the Commission, and to continue to be part of its leadership in my role as vice chairman. I am deeply appreciative of the Governor's confidence in reappointing me, and I look forward to continuing to work with building officials, other experts, members of the public, and with the Legislature on our always-evolving code standards. The Commission is determined to take actions that ensure that California remains in the forefront of national and global leadership in the vital area of safe and environmentally responsible building code standards.

During the past two years of my first four-year term on the Commission, I served as the vice chair – and I'm delighted to add that my Commission colleagues recently reelected me to this position. While a member of the Building Standards Commission, I've played a leading role in the decision-making process that resulted in the adoption of important state-wide initiatives – including passage of the International Building and Fire Codes as the base codes for California that became effective January 1, 2008; the Commission's adoption of the Wildland Urban Interface Fire regulations; and the initiation of the green building standards code development process, an area that continues to grow exponentially with increasingly strong public demand for environmentally sensitive and sustainable building standards.

One other accomplishment that I'm proud of is my role in the Commission's efforts to amend accessibility regulations that enable us to maintain compliance with requirements in the Americans for Disability Act (ADA), a vital threshold that seeks to uphold fundamental rights of fairness and equality for everyone.

2. Please tell us about your goals as a member of this commission. What do you hope to accomplish during your tenure? What challenges do you anticipate to meeting these goals?

My goals as a member of the BSC are to ensure that the commission provides the expertise and policy direction needed to ensure that California remains a leader in building code standards – a leadership role that others throughout the United States and around the world will continue to recognize and to rely upon. Another major goal of mine is stay abreast of 'lessons learned' from cities and municipalities throughout our state, and from others around the world, in order to adopt these, where possible, as practical applications within our proposed standards. I want to ensure that the Commission incorporates appropriate applications into our knowledge base in ways capable of benefiting all Californians – thereby providing an effective model for others to emulate.

Other goals are:

- The evaluation and adoption of further green building standards. The current proposal will be a first step, followed by progressively more stipulated and mandated requirements to ensure industry compliance and the achievement of enforceable standards.

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- Updating the BSC's Strategic Plan.
- Adoption of the International Residential Code (IRC) as the base code in California for residential construction.

As for challenges I anticipate that in achieving the above goals, the primary one is striking a balance between the ideals we want in principle and the practical realities existing within California cities, large and small. A related challenge is our ability to build consensus among Commission members in setting clear priorities that reflect building code realities and establishing a timeline to implement our agreed upon priorities that is reasonable and feasible. And we have the never-ending challenge to communicate effectively with each other as Commissioners, with other key public officials, and with private sector/industry leaders, and with members of the public, to ensure we are clear about what we want to do and how we are going to implement the details required in ways that function in our market-based economy.

During the coming four years of my tenure on the BSC, I want to focus on implementing effective and substantial Green Building Standards – standards that are aggressive yet achievable, and standards that partner with private sector skills, expertise and experience, and which will therefore become a significant model for others.

3. What do you believe are the most pressing issues that BSC is facing currently?

I believe the most pressing issue before the BSC at this time is dealing effectively with the establishment of green building standards. Green building and its integrated approach to energy efficiencies and materials to the design, construction and operations of buildings in both commercial and residential sectors are the 'next wave' and already upon us. We appear to be at one of those 'tipping points' that business gurus love to cite these days; and we're definitely in the midst of what was once called a "sea-change" or "paradigm shift" in how we build and how we live. It's therefore imperative that BSC take an active role in establishing and implementing green building standards that are aggressive yet achievable in order to sustain California's leadership in this very vital area of building code standards.

4. & 5. Why is BSC considering proposed [green building] regulations that are mostly optional, rather than required, minimal standards? What would you recommend to ensure that green building regulations provide minimal standards, and that the standards themselves do not become a source for 'green washing' projects?

The Commission is moving towards establishing mandatory standards in 2010 and will adopt voluntary standards next month – the first state in the nation to do so. We have learned a great deal – and continue to do so – from industry's practical experience, just as our knowledge base is growing thanks to the Green Building Council and its Leadership in Energy and Environmental Design (LEED) standards, as well as from others. But I believe we need to address green building standards methodically to ensure they achieve the priorities we are setting and do not undermine our obligation to public health and safety – as the earthquakes in China remind us are a significantly reality in our seismically active state. I certainly do not support 'green washing,' where

we permit declarations of so-called good intentions to prevail over substantive and enforceable standards.

Please note, too, that several of the green building bills passed by the Legislature would not have required the development of statewide code until 2013, though the BSC will have its initial green building code adopted this year, in 2008, and designed to incorporate full mandatory measures in the 2010 code update. That's five years ahead of the 2013 date proposed in last year's legislative bills – an accomplishment that we can all be proud of.

Equally important, the BSC's approach to adopting effective green building standards builds upon California's more than 20-year practices that have established the state as an international leader in areas such as energy conservation, water conservation and seismic strengthening – resulting in some of the most efficient and sustainable buildings in the world. This approach also reflects the results we received directly from our public focus group on this matter – a focus group that included sundry environmental groups, model building code organizations, state agencies, two local government jurisdictions, as well as from the California State University and the University of California educational network. This group's discussions provided the impetus behind an initial voluntary base code that could be carefully evaluated and built upon prior to establishing mandatory requirements. This approach thus enables industry and enforcement agencies to prepare for and adjust to proposed green building standards before they become mandatory, and increases significantly the likelihood of high compliance.

6. Do you believe the proposed BSC regulations prevent “greener” standards at the local level?

I believe there is always room at the local level for standards that exceed what the Commission proposes state-wide. As with other parts of Title 24, Green Building Standards Code will not limit the ability of local jurisdictions to adopt additional standards that will encourage new products and technologies. The fact of the matter is that it would be very difficult to misinterpret the provisions of law that permit local jurisdictions to adopt more stringent standards than Title 24. These provisions are stated clearly in several parts of the Health and Safety Code, and repeated in the codes for clarity and usability and to underscore local adoption authority. I believe this is a matter of establishing key building code priorities that reflect accurately green standards that enable us to achieve specific goals over a specific timeline. Our goal is to promulgate a baseline set of standards applicable to all jurisdictions, and that give sufficient direction to industry that encourages the ongoing market development of products, technologies and services. I will use my position as a member of the BSC to make this happen.

7. As director and chief building official of the San Francisco Department of Building Inspection, how do you view the proposed BSC regulations in relation to the proposed green building codes in San Francisco?

With new legislation pending based upon recommendations from the Mayor's Task Force on Green Building, as well as from members of the City's Board of Supervisors, the BSC proposed green building regulations are not yet as specifically detailed as what's being reviewed and debated today in San Francisco (though the BSC proposals are not far behind, either). We are fortunate in San Francisco to have an active, dedicated and constantly involved community that is determined to be on the cutting

edge of green building standards. I'm proud to be associated with what is undoubtedly one of the most aggressive green building 'incubators' in the nation. The proposed City legislation reflects the views of many private sector participants within the building and construction industry, but this is an area of regulation development that is still dynamic and under debate. The proposed BSC regulations attempt to strike a balance among the many conflicting needs and issues of a wide range of stakeholders, and thus, in my view, constitute an excellent first step for setting statewide standards for coming generations of green buildings.

8. What is the anticipated time frame for BSC to review and approve [the California Department of Water Resources' proposed building standards for deep floodplains]? After DWR submits its proposal to BSC, will the public have an opportunity to submit comments to BSC on the proposal?

The adoption process of building standards by the BSC for the deep floodplains will follow the Commission's standard process, as detailed in the Administrative Procedure Act (commencing with Government Code Section 11340), California Building Standards Law (commencing with Health and Safety Code Section 18901) and the California Code of Regulations Title 24, Part 1, Chapter 1. The public will certainly be provided ample opportunity to participate/comment on proposed standards at many steps in the process, up to and during any final action to be taken by the BSC.

BSC is anticipating DWR to submit its proposed regulations for adoption in January 2009. The regulations will be added to the 2009 code adoption cycle, which currently has a projected adoption and approval date of January 2010.

9. What factors will you consider when this proposal comes before BSC for adoption and approval?

The National Flood Insurance Program (NFIP) was established by Congress in 1968, and has an impressive and long-established record of criteria, with some 98 percent of all California communities participating in NFIP. BSC will certainly consider the criteria set forth by NFIP, and take steps to ensure that any proposed building standards for deep floodplains are consistent with baseline standards established through the NFIP.

Other critical factors that will come into play once this proposal comes forward to the BSC include:

- Do the proposed standards meet the intent of the law?
- Do they provide a level of protection envisioned by the legislature?
- Have all key stakeholders reviewed and contributed to a rigorous review process?

I also would recommend that BSC utilize the principles of the so-called "Nine Point Criteria Analysis," to determine if the proposed standards should be approved, rejected or returned to DWR for further review. These are:

1. The proposed building standards do not conflict, overlap, or duplicate other standards.
2. The proposed building standard is within the parameters of enabling legislation.
3. The public interest requires the adoption of the building standard.

4. The proposed building standard is not unreasonable, arbitrary, unfair, or capricious.
5. The cost to the public is reasonable, based upon the overall benefit derived from the building standard.
6. The proposed building standard is not necessarily ambiguous or vague.
7. Applicable national specification, published standards, and model codes have been incorporated. If not, the state agency must define the inadequacies or nonexistence of a national specification, standard, or model code.
8. The format of the proposed building standard is consistent with the BSC's format.
9. The proposed building standard, if it promotes fire and public safety as determined by the State Fire Marshal, has their written approval.

Please be assured that the BSC is very mindful of its public access and public review responsibilities. There will certainly be ample opportunity at appropriate times for the public to submit comments to our Commission on issues related to DWR's proposed building standards for deep floodplains.

Thank you for your consideration of my views and responses to the above Confirmation Hearing questions on my reappointment to the California Building Standards Commission. I am honored to serve on this distinguished and essential body, and look forward to working closely with all parties during the coming four years to fulfill the Commission's essential safe building code responsibilities.

Sincerely,

Isam Hasenin

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

April 23, 2008

John L. Littrell

Dear Mr. Littrell:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Alfred E. Alquist Seismic Safety Commission on Wednesday, June 11, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by May 14, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 14th.

Statement of Goals and Priorities

The Seismic Safety Commission was established in 1975 to advise the Governor, Legislature, state and public agencies, and the public about strategies to reduce earthquake risk. This is the only body in the nation solely constituted to advance earthquake safety. Over the years the commission (renamed in 2006 to the Alfred E. Alquist Seismic Safety Commission) has served as an expert body to promote public policy and research related to seismic safety in California.

1. *What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?*
2. *Why do you believe you are qualified to serve on this body?*
3. *What are the short- and long-term priorities of today's commission?*

Senate Rules Committee

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Appointments
1651-4151 • FAX (916)

Funding and Structure of the Commission

The funding source for the Seismic Safety Commission has been under debate for many years. From 1975 to 2004 the commission was funded through the General Fund. Currently, the commission is funded by an assessment on residential and commercial property insurance policies that is levied by the Department of Insurance. The assessment is set annually and will generate \$1.1 million in 2007-08. This funding of the commission was extended from 2007 to 2009 by SB 1278, Chapter 532, Statutes of 2006, and will end on June 30, 2009. Recent commission meetings have addressed appropriate funding mechanisms.

4. *What is the commission's role in determining or recommending the most appropriate funding mechanism?*

Seismic Research

The 2007-08 Budget included \$2 million for the commission to appropriate toward seismic research projects. These funds are part of the estimated \$6.4 to \$6.6 million from the California Research Assistance Fund, which was created by former Insurance Commissioner Chuck Quackenbush as a result of a court settlement.

5. *What is the status of awarding funds for these research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?*
6. *Has the commission sought to coordinate this research with either the U.S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?*

Status of Seismic Retrofitting of Hospitals

In 1972, after the San Fernando Valley earthquake, the Legislature passed the Hospital Seismic Safety Act, which requires specific building standards for hospitals and establishes timetables to complete the necessary seismic retrofits. There have been a number of attempts over the years to change the standards and timeframes required for seismic retrofitting of hospitals. A few months ago the Building Standards Commission voted to allow hospital administrators to utilize a new risk-assessment software tool developed by the Federal Emergency Management Agency (FEMA) called HAZUS (Hazards U.S.). This will replace the old risk-assessment tool developed in the 1990s. This change will allow many hospitals up to 22 additional years to strengthen their buildings.

7. *Can and should this new risk-assessment tool be used to evaluate the safety of other structures such as dams and reservoirs?*

Japan Earthquake Investigation Team

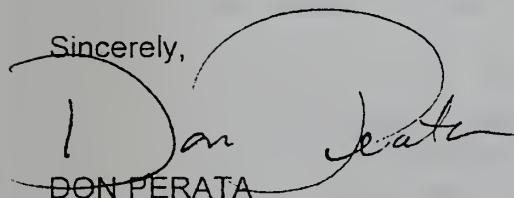
Last July, Japan experienced a magnitude 6.8 earthquake that caused dozens of problems at the world's biggest nuclear plant, leading to releases of radioactive elements into the air and ocean and an indefinite shutdown. The earthquake also affected Japanese businesses. The commission has sent one investigation team to Japan and it may send another.

8. *How is this information shared with commission members?*
9. *What was learned from the first investigation team that can be applied to California?*
10. *Is the commission planning a second investigation visit to Japan in the near future? If so, what will be the focus of that visit?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:KW

cc: Alfred E. Alquist Seismic Safety Commission

Senate Rules Committee –Responses

1. Contributions would include recommending improvements and enhancements to various facilities in the State to make them better prepared to respond to seismic events. My particular expertise is in mechanical and electrical engineering. My practice has been in both construction and infrastructure projects. The output of my effort will be measured by useful recommendations in improving seismic preparations and performance. Duties so far have included attendance at two commission meetings and an on-site review of the San Francisco Public Utilities Commission Seismic Retrofit Program.
2. Qualifications include 35 years of mechanical and electrical engineering practice. Much of it has been for facilities of all types in California where seismic issues were a consideration. Service has also included the Hospital Building Safety Board for approximately seven years.
3. The priorities of the commission are summarized in the "2007 Annual Report" and the "California Earthquake Loss Reduction Plan 2007-2011." There are eleven major elements with associated objectives and strategies for each.
4. The research generated by the commission and the input provided by the commission will considerably enhance the readiness of the state for a seismic event. This will result in saving hundreds of lives, saving billions of dollars in damage, and helping our state economy to quickly get back on its feet after the next major earthquake. Seismic experts report that there is a very high probability of a major seismic event in California within the next 20 to 30 years. The investment of a few million dollars a year to achieve these savings in life and property seems very worthwhile. Realistically our state government is the only entity with the authority to make the Seismic Safety Commission a viable entity. Funding the commission through one department or another of state government will pay huge dividends in the future. It is easy to forget the devastating effects of past seismic events because they occur infrequently. If we better prepare our buildings, our infrastructure, and our people, then the kind of devastation we have seen in past earthquakes will be significantly mitigated.

Senate Rules Committee

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5. The commission has funded five projects so far totaling \$1.35 million:

Household Preparedness Survey, \$350,000. This will allow the Commission to gauge the public's understanding of the earthquake threat and commitment to preparedness, along with helping us determine the most effective way of reaching out to the public.

Performance of Field Act School Facilities, \$350,000. This 18-month study by the Collaborative for Disaster Mitigation will compare the performance of how public and non-public schools have performed in significant earthquakes. This is an opportunity to quantify how one of the state's earliest and most important seismic safety laws has protected our children and others.

Tsunami Scenario for Ports of Los Angeles and Long Beach, \$50,000. This study dovetails with, but does not duplicate, work being done through the Governor's Office of Emergency Services regarding the threat of tsunamis from a major earthquake in the Pacific Northwest. It will look at several tsunami scenarios in great detail as they would affect the ports, through which 40 percent of the nation's imports pass.

Tall Buildings Initiative, \$350,000. With a number of tall buildings either proposed or under construction in Los Angeles and San Francisco, it is critical to understand how these buildings will perform in an earthquake. This study will look at how certain materials and construction practices affect performance, and will determine if higher performance standards are necessary.

Art Center of Design: Southern California Earthquake Scenario, \$250,000. A creative, high-quality outreach program will be created to coincide with the "Shake-Out" series of events in November, which also includes the Golden Guardian disaster exercise. An earthquake resource book for the media will be developed and distributed. A public-awareness campaign and a unique civic event to publicize the need for preparedness is also part of the contract.

There are several criteria used in selecting research projects. A project first must tie into one of the goals in the State Hazard Mitigation Plan, the California Earthquake Loss Reduction Plan, or State Plan for Earthquake Research.

Project readiness and the usefulness of the proposed product are also important. Any research effort must be consistent with conditions imposed by

the court in transferring the funds. And, as always with the Commission, we seek opportunities to leverage the funds by tapping other sources or forming partnerships to make the dollars go as far as possible.

As a member of the Commission, my role will be to evaluate these proposals and to encourage partnerships that make research as complete, effective and useful as possible.

6. Lucy Jones is a member of the Commission and a preeminent scientist with the USGS, so the Commission is a natural partner in seeking appropriate research opportunities. The previously mentioned Tall Buildings Initiative is being done by the Pacific Earthquake Engineering Research Center.

The Commission is always ready to form partnerships to leverage our resources and conduct research that is readily applied to mitigation or preparedness.

7. The Hazus Modeling Program may be adaptable to alternate structures. Generally the structural engineer members of the commission can provide a more informed opinion on this program.
8. The commission has been provided a report and presentation from the Japan Investigation Team. Team members who attended presented their individual impressions.
9. There is useful information gained in the areas of Earthquake Early Warning, Earthquake Damage Mitigation Programs, Tsunami Mitigation, and Insurance Programs. The commission will be looking into the feasibility of implementing these strategies in California.
10. The commission will not be sending a second investigation team.

THOMAS J. DAVIS

May 1, 2008

Senator Don Perata
Chairman, Senate Rules Committee

ATTN: Nettie Sabellhaus, Rules Committee
Appointments Director
State Capitol
Room 420
Sacramento, CA 95814-4900

Senate Rules Committee

MAY 09 2008

Appointments

Dear Senator Perata:

Please find below my responses *in italics* to the questions related to the Senate Rules Committee Confirmation Hearing for your hearing of June 4, 2008. You should note that I have only been on the Board for a short time and some of my responses are based on my limited research of the Board's activity in the past. Also attached per your request is an updated form 700, Statement of Economic Interest.

Statement of Goals:

1. What do you hope to accomplish during your tenure as a member of the board?

During my tenure as a member of this Board, I hope to work with my fellow Board Members and staff make a significant improvement on the quality of water in the basin, particularly ground water.

What goals do you have for the board, and how will you accomplish them?

I hope to continue the work of the Board in effectively enforcing existing permits and waste discharge requirements, approve new permits, implement Total Maximum Daily Loads (TMDL) and address water quality issues directly affecting the New River and Salton Sea and/or ground water supply.

I hope to accomplish these goals by providing decisive implementation of both enforcement and permits, supporting development and implementation of TMDLs for those water bodies and the Colorado River waters imported for recharge, and encourage phase out of septic systems.

How will you measure your success?

Success will be measured by quantitative improvements to those water bodies and the ground water and by greater public (and regulated community) awareness of threats to those waters and best management practices.

2. What do you believe are the most serious issues facing your board?

From my individual standpoint, the most serious issue facing the Board is the protection of the ground water basin. Increased urban run-off in the Coachella Valley and agricultural irrigation throughout the basin is a top concern. Additionally, the stabilization of the Salton Sea, further progress with the New River and the systematic elimination of septic systems, particularly in the High Desert are top priorities.

3. How does your board help the public understand the state of water quality in your region?

The staff provides regular water quality updates during the board meetings and other public outreach events as well as providing extensive information through its website. It is my understanding that from time to time, staff holds public workshops on various specific issues.

Where should the public go for information on water quality issues such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?

I have found that, first, accessing the Regional Board website is an excellent information source. Direct contact with the staff at their Palm Desert office is also highly advisable. I have found our Regional Board staff to be very helpful in providing public information. Staff also participates in various public outreach and educational events.

State and Regional Board Roles

4. Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you?

The Regional Board staff has been extremely helpful in providing information and source material to understand the issues of the region and the challenges of the Board. State Board staff and counsel have also been extremely helpful and supportive. An example is the recent conference held in San Diego that was cosponsored by the State Water Resources Control Board and the Water Education Foundation.

The Regional Board not only provides extensive and informative Board packets, but also diligently and timely conveys related correspondence on anticipated matters.

The Office of Chief Counsel is generous with their time in support of the Regional Board and has provided extensive information related to ethics, conflicts of interest, Ex Parte communications as well as our two different roles in adjudicatory and quasi-legislative actions. My own legal orientation prior to my first Board meeting was extremely informative and thorough.

Do you have any suggestions on how the state water board's staff might better assist you?

I believe that a broader elementary orientation to all matters related to state water policy be mandatory for all new Board Members and "refresher" courses be instituted for tenured Board Members.

5. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda?

My original legal orientation, as I mentioned, was quite extensive in the area of conflicts of interest. Also, within my regular working environment (day job) I must facilitate Boards and Commissions and I have dealt with regulatory Boards and Commissions my entire career. I also previously sat on other appointed public Commissions.

How do you know when to withdraw yourself from voting on an issue?

I would withdraw from voting on any issue that would possibly have the appearance of a conflict of interest and that would be any issue that might affect my income, family, employer or personal property.

Have you ever done so since being appointed to this board?

I have not had to do so since my appointment.

6. What is your view of the relationship between the state board and your regional board?

In my very short time on the Board, I have only seen a very collaborative working relationship between the State Board and the Regional Board. It is my understanding, due to current budget crisis, that the objectives placed on the Region by the State Board may be an issue now and maybe so in the future.

Could coordination and accountability be improved?

Again, my brief tenure does not allow me to provide specifics on this area, but coordination in any large bureaucratic organization can always improve. I believe the mechanisms for accountability are presently in place and adequate.

If so, how?

Without a better experience and exposure to this relationship, I cannot give specifics, but, generally, regular person-to-person dialogue and more state-wide conferences would certainly be beneficial.

7. How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing?

Implementing and enforcing Federal and State laws and policies without adequate funding is an extremely pervasive and broad issue. This is a challenge no local or regional agency is immune to. We trust in our Regional Board Executive Team to implement these mandates with the resources available and we support their prioritization of programs, maximizing the use of available resources.

Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?

I believe that Basin Planning; comprehensive TMDL development and implementation; and non-point source pollution are areas that need greater attention, and therefore, funding.

Cleaning Up Polluted Waters

8. Please describe the status of your board's TMDL process.

It is my understanding that this Board, prior to my appointment, adopted bacterial indicator TMDL's to address impacts on the Coachella Valley Storm Water Channel. Water quality monitoring programs have been and continue to be set-up. My experience has seen that collaborations with the Imperial County Farm Bureau, The Coachella Valley Water District and other major regulated bodies has developed monitoring programs and TMDL programs that allow Regional Board staff to augment their efforts.

Does your board have adequate resources to develop and implement the required TMDLs?

I believe the Board has adequate resources to develop and implement TMDLs that the Board prioritized during the Basin Plan Triennial Review. However, in order to maintain this progress and address all the TMDLs in a timely manner, more funding is needed.

9. How will the board monitor and enforce the TMDLs it has or will adopt?

All TMDLs direct executive staff to implement them. Administrative civil liability complaints are aggressively and thoroughly followed-up. Comprehensive monitoring programs are underway and/or in the planning stages. Dischargers are required to develop and implement water quality plans and submit those plans to the Regional Board. The dischargers are also required to submit those results to assure compliance. Also, Surface Water Ambient Monitoring Program

funds are used to track compliance.

Enforcement of Water Quality Laws

10. What enforcement options do you believe provide the most effective tools for violations of board orders?

Regional Board staff is directed to fully implement the State Board's Water Quality Enforcement Policy. I greatly appreciate the staff's efforts in resolving non-compliance issues to resolution before they come before the Regional Board. The Board also utilizes cease and desist orders, clean-up and abatement orders, fines, etc. to deal with the most flagrant violations. Minimum Mandatory Penalties for NPDES violations must also be used. At last resort the use of the District Attorney's or US Attorney's offices should be enlisted when appropriate.

11. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act?

The California Water Code is clear as to the issuance of Minimum Mandatory Penalties and I believe that the State Board's Water Quality Enforcement Policy provides guidelines for fines. Fines and penalties need to be utilized on a consistent and even-handed basis where called for.

When are fines and penalties not appropriate?

Staff should be given certain discretion to work with potential or initial violations, as a result of ignorance or acts of nature, in a manner that produces beneficial, long-range results. Fines and penalties are more appropriate for the purposeful, non-cooperative, non-responsive and chronic violators.

New River Pollution

12. What progress has been made and what types of water quality impairments still exist?

I am still learning about the Board's accomplishment in this area. It is my understanding that significant progress has been made due to the Mexicali I and II projects to the benefit of the New River. TMDLs have been adopted for the New River. TMDLs have been adopted that address pathogens and waste and TMDLs are pending for dissolved oxygen and volatile organic constituents.

What needs to be done to address the remaining water quality impairments in the New River?

A lot more needs to be done and continued cooperation with the Federal agencies and Mexican entities is called for. Continued adoption and implementation of TMDLs is needed. Industrial waste discharge continues to be a problem.

13. Has the board developed and implemented a TMDL for phosphorus?

No, this TMDL is still in preparation.

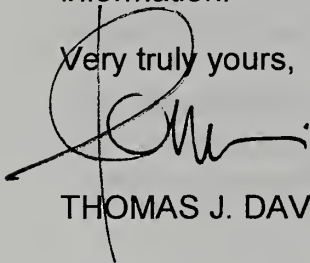
14. What strategies are available to the board to deal with the eutrophication, increased salinity, and stabilization of the Salton Sea's elevation?

The Salton Sea's problems go far beyond the capacity of the Regional Board.

It is my understanding that the Resources Agency submitted to the Legislature a plan with a preferred alternative to restore the Salton Sea. The legislature needs to enact law with a preferred alternative and an appropriate funding mechanism to implement the alternative. Regional Board staff believes that until this happens, the Sea will go hypersaline. Federal, State and local agencies must cooperate to restore this valuable resource to a level where the Regional Board can have an effective role in its protection. Once a preferred alternative is enacted and funded, the Regional Board can play a key role in restoration activities.

I hope you find my responses sufficient. Please contact me if you require any additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Davis', with a large circular flourish on the left side.

THOMAS J. DAVIS

C: Robert Perdue, CRRWQCB

Attachments

May 12, 2008

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capital
Sacramento, California 95814

Dear Ms. Sabelhaus:

Per Senator Don Perata's letter dated April 16, 2008, please find my responses to the questions submitted as follows:

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*

My overarching goal as a board member is to restore, enhance and preserve the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations, as reflected in our Mission Statement. Various predefined criteria and metrics will be applied to measure progress and success.

Goals in support of this Mission include:

- Approval of the Basin Plan Amendment within eighteen months with success being measured by Board approval "as is" within this timeframe.
- Water quality standards are adhered to as evidenced by enforcement of existing permits, establishing new permits and waste discharge requirements (WDRs) to regulate new discharges; timely development and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies and close monitoring; clean up and abatement programs where necessary; practicable pollution controls; phasing out septic systems and the impact on the water supply; improving recycling efforts as needed; and working with the community to engage public participation and facilitate good working relationships.
- Bringing a municipal Wastewater Treatment System to Yucca Valley, ensuring an adequate water supply for the future.

2. *What do you believe are the most serious issues facing your board?*

The most serious issues facing the Board are protection of the groundwater in the high desert and the Salton Sea, quality attainment and the impact on the surrounding ecosystem... The Colorado Board has issued a resolution stating that the protection of the groundwater in the high desert is their number one priority. The problem needs to be addressed collectively by all three levels of government and the Board needs to continue to play a pivotal role in active regulatory practices.

Senate Rules Committee

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Appointments

Other high priority issues include irrigated agriculture and new river pollution from Mexico.

3. *How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?*

The Board, through staff, makes significant effort in educating the public on the state of the water quality in our region on an ongoing basis. We strive for innovative, efficient and economical ways to disseminate information to the public via multiple channels including, providing information regarding quality data and public notices on our website, Public Service Announcements (PSAs), newspapers, and community events and:

- Providing periodic water quality information reports during public Board meetings and various locations throughout our region.
- Conducting public workshops on various issues e.g., Salton Sea, New River, development of water quality standards, etc...
- The formation of advisory committees.
- Staff participates in various outreach and education venues.

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

4. *Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?*

I have received assistance from the regional board's executive officer and other staff members and have been extremely satisfied with the outstanding cooperation from the regional office.

The office of Chief Counsel with the State Board also provides invaluable assistance and written guidance and advice on various relevant topics.

Going forward I look forward to availing myself of the resources of the state board including their plans and policies, Water Quality Coordinating Committee (WQCC) meetings, workshops and symposiums, field tours, so as to enhance my understanding of complex issues and foster collaboration and synergies that will ultimately serve to benefit multiple regions and the state at large.

5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

Over thirty years of business experience and acumen have prepared and made me keenly aware of understanding and handling conflicts of interest that might arise.

Additionally, I have completed Ethics Orientation for Public Officials in April 2006 and November 2007. As a designated employee of the Hi-Desert Water District, a public agency, I am required to take a class on ethics orientation every two years. The Office of the Chief Counsel also provides written guidance and advice on handling issues that might arise.

Training and extensive business experience will insure that I will abstain or recuse myself when required. At my first board meeting I abstained from approving the minutes of the November 2007 meeting since I did not attend that meeting.

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

Given my relatively short tenure (since November 2007) on the Board, it is premature to give a fair assessment of the relationship between the state board and the regional board. The state board appears willing to work with the regional board as recently demonstrated when the regional board requested that an item be removed from the state board's agenda and the state board complied with the request.

However, the perceived lack of accountability, efficiency and transparency can potentially be improved by continuing to provide ongoing inclusive communication, coordinated Regional Board Activities, adopting and enforcing statewide policies and procedures for consistency and providing periodic program audits and feedback. Also, budget practices might be improved by better aligning the State Board's decisions with Regional Board's requests.

7. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

The staff of the regional board has presented goals and objectives and the number of headcount and resources required to perform the various functions. While the current state budget crisis will limit necessary resources and impact goal attainment, it will be up to the board to prioritize tasks so as to maximize results. A

significant obstacle will be to attract the best qualified talent if compensation packages are neither commensurate with job responsibilities nor competitive with the private sector. Today most businesses are confronted with "doing more with less" and therein lay the opportunity to tackle such challenges.

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and TMDL programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

8. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

The TMDL Program is a priority for our Regional Board and staff and is reasonably successful given the current resources. These programs are complex and resource intensive. The current status of our programs is as follows:

1. TMDLs adopted and approved by the State Board and USEPA:
 - a. Silt TMDLs for the New River, Alamo River and Imperial Valley Drains; Pathogen and Trash TMDLs for the New River.
2. TMDL adopted by the Regional Board, but on hold:
 - a. Bacterial indicators for the Coachella Valley Storm Water Channel.
3. TMDLs in draft form:
 - a. Dissolved oxygen and volatile organic constituents (VOCs) TMDLs for the New River; pathogen TMDL for Palo Verde Outfall Drain (Regional Board has requested USEPA de-list PVOD as impaired).
4. TMDLs in development:
 - a. Nutrients TMDL for the Salton Sea (to be completed by 2009), Pesticides for Imperial Valley Drains (also in 2009).

Additional funds are required for successful, effective and comprehensive TMDL implementation and to address any new state mandated TMDLs that arise.

9. *How will the board monitor and enforce the TMDLs it has or will adopt?*

Our Region TMDLs have water monitoring programs at various levels, drains, rivers, and the Salton Sea to ensure TMDL "loads" are attained. Dischargers are required to develop and implement water quality improvement plans and submit those plans to the Regional Board for approval. Certain dischargers may be required to monitor the quality of their discharges of wastes and submit their results to the Regional Board to track their compliance with the TMDL requirements. We are currently using the Surface Water Ambient Monitoring Program to track compliance with TMDLs and assist in TMDL development. The Regional Board staff fully implements the State Board's Water Quality Enforcement Policy and use rapid and progressive enforcement to deal with violations of TMDLs and illegal discharges, including informal and formal enforcement.

Enforcement of Water Quality Laws

Three years ago the office of the secretary of Cal/EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

10. What enforcement options do you believe provide the most effective tools for violations of board orders?

The Regional Board has directed staff to fully implement the State Board's Water Quality Enforcement Policy on a consistent and fair basis and use rapid and progressive enforcement, as mentioned above, to deal with violators of Board orders, TMDLs and all other illegal discharges. Progressive enforcement begins with informal enforcement such as issuing a letter of non-compliance followed by more formal enforcement actions, including fines, cease and desist order, and referrals to the Attorney General or District Attorney for recalcitrant violators.

11. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

I believe that fines act as deterrents and should be commensurate with the severity of the violation and the culpability of the violators. Fines should be used to deal with recalcitrant violators of Board orders, recalcitrant TMDL violators and parties that have derived an economic benefit at the expense of the environment. Fines are necessary and appropriate for parties that have failed to cooperate with the staff during an investigation of non-compliance issues and spills. Anyone that falsifies data should be prosecuted to the maximum extent of the law. It is important to apply equitable and consistent principles when assessing liability. Non-serious non-controllable violations should fall into a discretionary enforcement category.

New River Pollution

The New River flows north from Mexicali, Mexico, into the United States just west of Calexico. The river has been called the most polluted river in the United States, with raw sewage and industrial waste being discharged into the Mexican portion of the river. In 1998 the regional water board said that the beneficial uses of the New River were impaired by bacteria, volatile organic constituents, nutrients, silt, and pesticides. Two projects in Mexico were developed—Mexicali I and Mexicali II. Mexicali I, which added and upgraded sewage collectors, was completed in 2004. Mexicali II added a 20 million gallon-per-day wastewater treatment plant which is now online.

12. What progress has been made and what types of water quality impairments still exist? What needs to be done to address the remaining water quality impairments in the New River?

I have been informed by staff that the new plant has eliminated up to twenty million gallons per day of raw sewage that were present in the New River. Water

quality at the Border with Mexico has improved significantly in terms of dissolved oxygen (DO), nutrients and bacteria. The dissolved oxygen in the River is now in compliance with our DO water quality objective.

Although bacteria has come down from the millions to somewhere between four thousand to eight thousand, bacteria levels still violate our water quality standards for them and remain a public health concern. Industrial discharges, trash and pesticides continue to be a problem with the New River. The Board will have to develop a plan and work with our Mexican counterparts to correct the problem.

Salton Sea

The Salton Sea is California's largest inland water body and home to more species of birds than any other place in California. Over 390 species of birds, including the endangered brown pelican and Yuma clapper rail, have been identified at the Sonny Bono Salton Sea National Wildlife Refuge. Eutrophication, or the enrichment of nutrients in the Salton Sea has sufficiently impacted its uses, including recreation, fishing, and wildlife resources. Some of the specific effects of eutrophication include high algal biomass, high fish productivity, low clarity, frequent very low dissolved oxygen concentrations, massive fish kills, and noxious odors. External loading of nutrients, particularly phosphorus, is responsible for the eutrophication of the Salton Sea. Approximately 75 percent of the freshwater inflow to the sea is agricultural drainwater from Imperial Valley which is increasing the sea's salinity.

13. Has the board developed and implemented a TMDL for phosphorus?

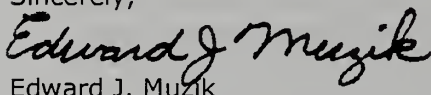
No, but a TMDL is being drafted.

14. What strategies are available to the board to deal with the eutrophication, increased salinity, and stabilization of the Salton Sea's elevation?

The Salton Sea's main water quality problems (salinity and nutrients) cannot be solved by any one agency. The state legislative body needs to enact a law with a preferred alternative plan and appropriate a funding mechanism to implement the plan. The Regional Board Staff believes that until this happens, the Sea will go hypersaline. Under this scenario, staff believes it makes very little environmental sense to implement a nutrient TMDL on the Sea itself, but proposes to continue to control nutrient in the Sea's tributaries to the maximum extent practicable. Once a preferred alternative is enacted and funded, the Regional Board can play a key role in restoration activities with a nutrient TMDL and controlling the other pollutants in the Sea's tributaries.

I have also enclosed a copy of my current Form 700. Please let me know if you need any additional information.

Sincerely,


Edward J. Muzik

CALIFORNIA LEGISLATURE

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SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

April 22, 2008

Honorable Mike A. Dispenza

Dear Mr. Dispenza:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Water Quality Control Board, Lahontan, on Wednesday, June 4, 2008. You will likely not be required to appear in person, but we request that you respond in writing to the following questions. Please provide your responses by May 14, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 14th

Because of situations that occurred with board appointees in the past, we ask that you provide these responses in your own words, not those of staff.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*
2. *What do you believe are the most serious issues facing your board?*
3. *How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues, such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?.*

Senate Rules Committee

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Appointments

SENATE RULES COMMITTEE QUESTIONNAIRE
Regional water board appointment

1. What do I hope to accomplish during my tenure as a member of the board? What goals do I have for the board, and how will I measure my success.

The role that I hope to be a part of is the proper use of water, which is the encouragement to recycle water, requiring higher quality waste water, constantly reviewing regulatory programs related to use of recycled water, streamline the process and to ensure consistency, along with tracking the use of recycled water in the region.

To work as a team to increase compliance with board orders, to assist staff as part of the team by requiring them to report regularly on violations and above all pursue a consistent and aggressive enforcement program. Measure and track number of significant violations.

It is my highest priority to look for the link between water quality and quantity.

2. What do I believe are the most serious issues facing my board?

My position is to keep water at it's highest possible quality for health and use. Pollution and degradation of ground water that has current uses or may be used in the future to store water as part of conjunctive use projects. And to make sure the region is properly funded to accomplish our mission.

3. How does my board help the public understand the state of water quality in the region? Where should the public go for information on water quality issues, such as beach closures, sewage spills, or the overall quality of the water in rivers and streams in my region?

The board has a web site in which information is provided on many subjects, such as impaired water body list, results of assessment of water bodies, monthly Executive Officer Reports, information on key projects (e.g. PG&E cleanup, Tahoe TMDL) We have monthly meetings in which the public is invited and an agenda is public record, and to personally hear their concerns. We inform the public of any violations through publications and meetings.

We have board tours as part of water board meetings that hosts public tours of water quality issues and example being a tour of a fuel reduction project at our May 8, 2008, meeting.

The water board staff conducts informal public workshops on issues that may come before us at a future meeting (e.g. PG&E HINKLEY PERMITS AND REMEDIATION PROJECTS).

The board staff disseminates draft water board actions to a wide array of interested parties, that list agendas for water board meeting agendas. They are sent electronically and mailed to over 250 persons and agencies.

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4. Who is available to assist me at the state board and regional board to better understand some of the complex issues before me? Do I have any suggestions on how the state board's staff might better assist me?

Keeping in mind ex-parte communications on adjudicatory matters, I am encouraged to communicate with our water board executive officer and our staff, and I have taken advantage of their generosity.

The state board provides the water board with an attorney from the Office of Chief Counsel that advises us on legal matters. Plus the seminars I have attended have been very useful and I highly recommend they be expanded and more often.

5. What training have I received to help me better understand when I might have a conflict of interest regarding an issue or issues on the board agenda? How do I know when to withdraw myself from voting on an issue? Have I ever done so since being appointed to the board? Shortly after appointment I received a briefing from the deputy chief counsel of the state board.

Also at water quality coordinating committee meetings the Chief Counsel of the State Board as provided and I'm sure will continue to provide reviews of conflict of interest laws.

My executive officer, Mr Singer, is aware of my prior public service and advises me of pending matters that may represent a conflict due to the location or proponent of a project within the jurisdiction I represent.

At my first meeting, I withdrew from deliberation and decision for a proposed action on Los Angeles County Sanitation District No. 20 as I was a former member of that board.

6. What is my view of the relationship between the state board and my regional board? Could coordination and accountability be improved? If so, how?

Regional boards are autonomous bodies that make decisions within the discretion provided both in law and in policy adopted by the State Board. The State Board has authority to overturn regional board decisions on petition or on its own action) and to ensure regional consistency of actions by regional boards.

The State Board is first line for addressing petitions of regional board actions so there should not be direct communications on project-level decisions so state board can remain unbiased to handle petition.

The state board can only ensure consistency if it adequately monitors the actions of regional boards-additional coordination and accountability would aid in this effort.

I have only been able to observe the relationship for a short time, however, I'm impressed by the teamwork that is apparent. I have met most of the board as they have attended meetings I have been involved with. They have put on an excellent seminar which I was fortunate to be able to attend. I know I can depend on the board working with us to assure our mission is accomplished.

To soon for me to comment, but I like what I have observed. I think the process has been hampered by the lack of an adequate data management system-a problem I believe is being addressed. However, The board seems to be very conscientious and have high integrity and knowledge, that is all I am expecting at this point.

7. How is my board able to address, within its current funding levels, the state and federal laws I am charged with enforcing? Are there issues I believe get less attention than they need due to current funding levels and constraints on resources?

From what I have seen this board does an outstanding job with what it has to work with, while not having the resources to accomplish all of its legal mandates and expectations.. We are able to enforce everything we become aware of, that is the sticking point, however, since recent expectations for enhanced enforcement to address violations erodes the ability to address other issues (e.g. delay in reviewing older permits, regulating facilities on an established frequency based on threats to water quality.

Knowing water quality problems become worse if not addressed in a timely manner the challenge is that we do not have the resources to look into everything we probably should, this comes down to addressing only the highest priority problems. I would like to see us being more pro-active and less re-active. However, a reality check will serve to let me know that we do not have enough money, because the state has a budget crises. We are lucky to have conscientious and talented people that still get most of the job done. We protect our people. Yes, we would like to pay close attention to everything, but I repeat, we do the priority things as good as anyone.

8. What enforcement options do I believe provide most effective tools for violations of board orders?

I believe education is a part of enforcement. This requires the board and staff to do pro-active work in our meetings and inspections, along with formal compliance schedules in cease and desist orders or cleanup and abatement orders that set clear water board expectations for discharger actions to achieve compliance and the basis for penalty actions if timely compliance is not achieved. I repeat I believe no one option is best for all situations. Not everything deserves a fine, but as I stated previously penalties provide a deterrent to the discharger to avoid future violations and to other dischargers to avoid similar violations, fines should fit the violation, applied fairly and consistently to all.

Also, forcing a public agency or company to regularly appear before the regional board to explain why they had violations and what they intend to do to correct the problems sends the message that the regional board is watching the situation and is prepared to act if progress is not being made. Most important is the follow up, to make sure we have made a difference.

9. What role do I believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

As I said above, fines and penalties are important, so hopefully they send the right message to others while forcing the violator to abide by the law.

Fines and penalties should fit the violator along with the violation, but when other measures can work just as effectively in some cases we should not be wed to one remedy.

Fines and penalties also serve to recover money that a discharger should have spent to comply and therefore it re-establishes a level playing field among competing companies (removes the unfair business advantage one company may have since it did not incur the expense necessary to comply with laws and regulations while another competing company incurred those expenses by being a law-abiding citizen.

10. Please describe the status of my board's TMDL process.

Does my board have adequate resources to develop and implement the required TMDL's?

We have thirty three bodies of water listed on the Clean Water Act Section 303(d) impaired Water Bodies list.

We have completed four TMDL's: Heavenly Valley Creek (sediment), Indian Creek Reservoir (nutrients), Squaw Creek (sediment), Blackwood Creek (sediment)

Three TMDLs for sediment, the Truckee River, Gray and Bronco Creeks TMDLs, are being considered by my board at its May 14, 2008 meeting.

Lake Tahoe TMDL (sediments and nutrients) is a major effort, with adoption in 2009.

Most TMDLs in the Lahontan region are for sediment, nutrients, and bacteria.

Our plans call for all to be completed within the next 10 years (with current staffing)

However, new waters may be added to impaired list in 2009.

Our board has about seven positions for TMDL work.

11. How will the board monitor and enforce the TMDLs it has or will adopt?

The implementation of TMDL enforcement will be by using existing water board regulatory programs. (For example, the Heavenly Valley Creek TMDL requires the ski resort to take actions to reduce sediment loading. Our board adopted waste discharge requirements for the ski resort that requires the resort to implement erosion control efforts. Importantly, monitoring is also required by the Water Board in the permit.)

Some TMDLs have identified remediation of legacy effects as the action needed to address the impairment.

One thing that I like is that monitoring measures are identified in each TMDL. Using permit compliance is one tracking tool. Memorandum of Understandings with land management agencies(e.g. USFS) provide for reporting of actions to address legacy effects (i.e. old roads). Additionally, my Water Board has identified the use of Water Code Section 13267 Orders requiring submittal of technical reports as another means to track efforts to implement actions required in TMDLs.

If we find that dischargers are not complying with permits our board has numerous enforcement tools available to address the violations.

While our board has the authority to require implementation of TMDLs through permits and to enforce violations of such permits, these actions need to be prioritized in relation to other mandates (issuing new and amended permits in response to applications, inspecting dischargers to determine if compliance is being achieved, enforcement for non-TMDL related violations). Unfortunately due to the above, the immediate implementation of TMDLs may not always be possible.

12. Does the Lahontan Board have plans for restoring the clarity of Lake Tahoe? Specifically, to what degree are nitrogen, phosphorus, and fine sediment loading being addressed?

The Lake Tahoe TMDL is a collaborative effort with the Nevada Division of Environmental Protection and the Lahontan board, and will identify the need to reduce fine sediment by 55% along with reductions in nitrogen and phosphorus loads to restore Lake Tahoe's clarity.

The TMDL will be implemented through amended permits for the municipalities and Caltrans.

13. What steps is the Lahontan board taking to improve interagency communication and communication with residents so that wildfire prevention efforts progress?

Our water board staff participates in an interagency Fuels-Fire Treatment Team (project implementers and regulators) to identify fuel treatment projects, prioritize, plan and permit.

Our staff is working cooperatively with the forest service in the development of a joint environmental document for a large fuel treatment project in South Lake Tahoe which will significantly expedite the permitting for this project.

Our staff is also busy working on developing agreements between the water board and other agencies to simplify permitting and identify a single permitting agency (TRPA-Tahoe Regional Planning Agency). These agreements and the improvements to the Timber Waiver are slated for our consideration in October 2008.

In January 2007 our board adopted a blanket waiver allowing property owners to complete any defensible space actions without notification or obtaining any permits from the board. Our staff is working with TRPA staff and fire districts to craft a consistent message on achieving both erosion control and defensible space on private property, the key word here is consistent.

14. What steps should the Board take to help reduce fuels buildup, especially in the South Lake Tahoe area?

Streamline permitting processes, goal would be one-stop-permitting and reduce or eliminate paperwork for benign projects.

We plan on reviewing existing regulations and prohibitions to determine if they are still scientifically justified or if more aggressive fuel reductions methods can be used without causing water quality impacts.

15. How will the Lahontan Board ensure the PG&E cleanup plan is on schedule and is effective in meeting its goals and objectives?

Our board is closely monitoring and regulating their actions.

Interim remedial actions (plume contain and some cleanup) this is directed by the cleanup and abatement order - also frequent reporting on compliance is required.

Discharge of water from remedial measures regulated by waste discharge requirements, along with required monitoring of said discharges is required.

Results of these interim actions along with final remedial strategy will be considered by our board in a few years along with environmental analysis of possible actions. The final remedial plan along with measurable milestones will be formalized in cleanup and abatement order.

16. What is my view of the role of the regional boards regarding this issue (pharmaceuticals and over-the-counter medications)?

Being a pharmacists by education, I am vitally interested in this subject, and we do have a responsibility to protect the beneficial uses of waters.

Not only can pharmaceuticals and over-the-counter medications affect humans if in drinking water but also we are seeing the affects on aquatic organisms.

I believe our board and others should work closely with the Department of Health Services and Office of Environmental Health Hazardous Assessment part pf CalEPA) on the implications to public health from these products in wastewater being discharged into our drinking water supply.

We should also work closely with the Department of Fish and Game to determine the effects of these products on aquatic organisms.

Since these products are regulated at the Federal level and if is determined that these products are indeed causing adverse effects on either human health or aquatic organisms, it will then be necessary to coordinate closely with other State and Federal agencies to determine the best method or methods to keep these products out of wastewater discharges.

17. Should the state board-through the regional boards-be working with the Department of Public Health to require testing and set safety limits for drugs in drinking water?

Yes, Yes, Yes, close coordination with many agencies is necessary.

It is the responsibility of OEHHA to set public health standards, and the Department of Health Services to set drinking water standards (question refers to this agency as Department of Public Health).

It is our responsibility (water boards) and indeed our duty, to ensure that discharges of waste do not result in pollution of waters used as drinking water supplies.

Respectfully Submitted

Mike Eng

CALIFORNIA LEGISLATURE

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DON PERATA
CHAIRMAN

April 16, 2008

James P. McGrath

Senate Rules Committee

MAY 09 2008

Dear Mr. McGrath:

Appointments

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Water Quality Control Board, San Francisco Bay Region, on Wednesday, June 4, 2008. You will likely not be required to appear in person, but we request that you respond in writing to the following questions. Please provide your responses by May 12, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 12th.

Because of situations that occurred with board appointees in the past, we ask that you provide these responses in your own words, not those of staff.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*
2. *What do you believe are the most serious issues facing your board?*
3. *How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

4. *Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?*
5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*
7. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

Cleaning Up Polluted Waters

The state and regional water boards are in the process of updating the strategic plan for water quality control in California. Governor Schwarzenegger has stated as a goal the full implementation of existing water quality programs such as municipal storm water permit programs and TMDLs programs.

According to a May 2007 report to the board, regional data collected in the past decade suggests bay water quality is "holding steady." The most notable water quality improvements over the last four decades came in the 1960s and 1970s. While problems from legacy pesticides like DDT, metals, and polychlorinated biphenyls have declined, likely in response to product bans and regulatory actions, new pollutants are being found such as polybrominated diphenyl ether (PBDE) associated with flame retardants.

Additionally, new testing by independent organizations has turned up a vast array of pharmaceuticals and over-the-counter medicines affecting drinking water supplies across the country. While the findings reported by the *Associated Press* in March 2008 involve miniscule amounts of various pharmaceuticals, concerns over long-term consequences to human health and possible additional testing have resurfaced.

Under current law, required testing and standard limits for pharmaceutical and over-the-counter drugs in drinking water are limited. Beginning in January 2008, several water systems began monitoring under the U.S. Environmental Protection Agency (USEPA) Unregulated Contaminant Monitoring Regulation for contaminants selected from the Contaminant Candidate Lists. These are potential contaminants that USEPA may regulate in the future. Federal and state laws give authority to USEPA, the California Department of Public Health, or the regional water boards to regulate contaminants, which could include pharmaceuticals.

8. *Please describe the status of your board's TMDLs process. Does your board have adequate resources to develop and implement the required TMDLs?*
9. *How will the board monitor and enforce the TMDLs it has or will adopt?*
10. *What do you believe are critical elements that should appear in the updated strategic plan for water quality control in California?*
11. *What is the board's progress in reducing mercury, PCBs, dioxins, pesticides, pathogens, PBDEs, and other pollutants that pose health risks to those recreationally taking fish and shellfish in San Francisco Bay and along the region's coast?*
12. *How are you informed about new sources of water pollution in the basin? How should the board respond to the increasing problem of PBDE, which is being found in harbor seals, fish, bird eggs, peregrine falcons, human breast milk, and the fatty tissue of humans?*
13. *In your view, what is the role of regional water boards regarding required testing and standard limits for pharmaceuticals and over-the-counter drugs in drinking water? Should the state water board, through regional boards, be working with the California Department of Public Health to require testing and set safety limits for drugs in drinking water?*

14. *Your board reported working in partnership with community groups on a project promoted locally to collect unused prescription drugs from area residents to help reduce contamination of water supplies. How does the board review the success of such projects? Do boards share "best practices"?*

Enforcement of Water Quality Laws

Three years ago the Office of the Secretary of The California Environmental Protection Agency (Cal-EPA) reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

15. *What enforcement options do you believe provide the most effective tools for violations of board orders?*
16. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Sewage Spills

The regional board has been criticized for its handling of two large sewage spills at the end of January 2008. Cal-EPA secretary faulted the regional board for not immediately investigating the release of 2.5 million gallons of untreated sewage into Richardson Bay through a tidal marsh, and a larger spill from the same municipal facility less than a week later. Both incidents reportedly posed health risks to people using the bay, and late reporting by the sewage treatment plant delayed health warnings to the public. State law requires the sewage-treatment plant to notify emergency officials of any dangerous spill as soon as possible and to tell the water board within 25 hours.

17. *What short- and long-term changes, if any, do you believe should be made to improve regulatory responses to sewage spills and promote more aggressive investigations of spill incidents?*
18. *In 2007 there were reportedly more than 275 spills of over 1,000 gallons each in the region. Should the board consider changes to address the problem of recurring sewage spills?*

Oil Spills

The board's executive officer reported that a cleanup and abatement order is being issued for the short- and long-term effects of the 58,000-gallon bunker oil spill into San Francisco Bay when the 900-foot container ship Cosco Busan struck a San Francisco-Oakland Bay Bridge tower on November 7, 2007. Tides carried an oil plume beneath the Golden Gate Bridge and into the Pacific Ocean. At least six beaches in San Francisco and Marin County were closed, fishing and crabbing were restricted temporarily.

19. *In your view, how should the board be addressing the impact of the oil spill and the cleanup and restoration of the bay and affected coastlines?*
20. *What do you consider to be important lessons learned from the incident that could be applied to further water quality management and in responding to future oil spills?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

DP:KW

cc: Water Quality Control Board, San Francisco Region

James McGrath

Nettie Sabelhaus
Senate Rules Committee Appointment Director
State Capitol, Room 420
Sacramento, CA 95814

Senate Rules Committee

MAY 09 2008

Subject: Confirmation hearing and questions

Appointments

Dear Ms. Sabelhaus:

This letter responds to the April 16, 2008, letter from Senator Don Perata about my confirmation as a Board member for the San Francisco Bay Regional Water Quality Control Board. I will try to give some general background, and then reply to the questions in numerical order.

BACKGROUND

I have been appointed to one of the water quality slots in the San Francisco Bay Regional Board, recognizing that I have over 30 years experience in water quality regulation and planning. In addition to my professional experience with the US Environmental Protection Agency, the Coastal Commission, and the Port of Oakland, I have been a board member of the San Francisco Estuary Institute (SFEI) for many years. In that role, I have participated in the committees that guide the Regional Monitoring Program (RMP) since its inception in the early 1990s. The RMP gathers chemical and biological information about the state of the Bay, and in particular, contamination. I have helped guide basic monitoring and research into the contaminant issues that the Regional Board must deal with. Of particular note is my role in helping establish a sources, pathways and loadings work group that endeavored to identify and quantify the sources of contaminants entering the Bay, and the pathways that might allow control. I believe that this gives me a particular insight into which contaminants that enter the Bay represent the greatest risk. The RMP is a particularly valuable monitoring tool since it is adjusted every five years to try to adapt ongoing monitoring to our increasing understanding of the Bay. I am also a windsurfer and kayaker who spends over 150 days on the Bay, and have a visceral appreciation for how the Bay has changed over the 30 years that I have sailed and paddled on its surface.

1. GOALS. My goals as a Board member, in no particular priority order, include:
 - a. Integrate chemical and biological restoration of the Bay. Look at wetland and other habitat restoration efforts as opportunities to also remove contaminants, or isolate them physically.
 - b. Mentor the Regional Board staff to a higher level of communication skills, particularly in effective stake holder processes.
 - c. Improve communication, on a two way basis, with the public, and with interested groups including the Legislature.
 - d. Use my understanding of the economics that motivate dischargers to seek ways to make regulation more efficient and effective.
 - e. Begin to integrate managing climate change into the work of the Regional Board.

- f. Develop a series of metrics for assessing performance and providing feedback. These can be used both to guide staff development, and to assess the effectiveness of regulatory programs
2. MOST SERIOUS ISSUES. I think that the two most serious contaminant issues facing the Board are managing the legacy contaminants such as mercury and PCB's that still plague the Bay, and preventing the introduction of new chemicals from creating a new round of legacy contaminants. I am mindful of the viewpoint of Dr. Michael Connor, Executive Director of SFEI, that emerging contaminants such as flame retardants (PBDE's) and pharmaceuticals may be a bigger threat to the Bay than legacy contaminants. SFEI did some of the pioneering work on flame retardants in San Francisco Bay.

There are two serious management issues that affect the approach of the Regional Board, particularly given its limited funding base. First, with limited funds, it is critical to develop the tools to identify the top priorities, and to improve overall efficiency of the staff work. Thus, it is important to implement recent approaches like total quality management that modernize government by developing metrics to guide work. Second, the problem of sewer overflows illustrates the importance of dealing with aging infrastructure and local government funding issues. In most cases, it is infiltration of freshwater into the collection and interceptor sewer systems that cause overflows. Local government priority setting and fiscal capability are part of what must be addressed to prevent such overflows. The Board has asked the staff to develop a systematic effort to identify existing and potential infiltration problems, and identify the priority systems for upgrades. We need to think creatively about potential solutions, including considering funding mechanisms such as State bonds to prevent overflows.

3. EDUCATING THE PUBLIC. I think that the starting point for helping the public understand the state of water quality is a good web site that summarizes data, and provides more detailed information for those who are interested. The San Francisco Regional Board can rely not only on its own web site, but also on the web site of the San Francisco Estuary Institute (www.sfei.org), and SFEI's publication Pulse of the Estuary. Other information is also available through the Estuary Project, staffed through the Regional Board, and information about the quality of dredged material, available through the Corps of Engineers. The Board has urged the staff to develop a more proactive posture through news releases that provide a context for issues such as spills and enforcement of violations that attract media attention.
4. UNDERSTANDING COMPLEX WATER QUALITY ISSUES. I have access to Regional and State Board staff, both at the management and working level, to ask questions. I also have a strong background in water quality. Further, the public participation process usually shapes the issues that come before the Board, and I read letters to the Board on pending issues carefully to be aware of any differences of approach or values.

The role of a Regional Board member requires some care in contacting the staff. First, one of the roles that the Board has is to review the approach of the staff, both for technical merit, and for policy. We might want a greater sense of urgency, or we might have a different approach on issues such as how much money it is reasonable to spend on a certain problem. Second, we need to make sure that the bases for our decisions are well laid out in a complete and publicly accessible record. That record must include the factual basis for our decisions, as well as our comments and findings showing how we weighed the different factors in reaching a decision. This

record provides guidance for future regulatory efforts, or review by the State Board or the courts that might be sought by those who disagree. Thus, I am careful to make sure that any direction I give the staff, or clarity I seek, becomes part of the record.

5. **TRAINING.** I have been briefed in person, and through web documents, on conflict of interest and making a decision based on the record before the Regional Board. This includes care about ex parte communications, and a careful review of my activist roles to make sure that I don't create even the appearance of a conflict. Since all of my income derives from retirement or investments, I think that awareness of my investments is the most important issue. I have also consulted with the State Board's attorneys and the Attorney General's office for further guidance on whether I should resign from other boards such as the Berkeley Waterfront Commission or the Bay Trail Board. After looking carefully at this matter, I resigned from the Bay Trail Board, and educated myself to the potential of different agency roles between the City of Berkeley, the Regional Board, and BCDC (I am the Regional Board's representative to BCDC) that might require me to recuse myself from involvement in decisions.

I am also concerned about the appearance of conflicts, particular in considering whether to accept gifts. When invited to the Bay Planning Coalition (BPC) meeting last December, I elected to pay my own way rather than attend as a guest. I have worked with the BPC in the past, and I think that there are many benefits that arise from its goal of organizing industry voices that might also be dischargers. I also consider their Executive Director a friend. Thus, I have no problem with supporting the overall organization by paying for a function, whether I agree with their approach on a particular issue. When again invited to attend the annual meeting and reception of BPC this month, I consulted with the Regional Board staff attorney to make sure that I understood the rules, and what would be considered a gift. I elected not to attend because I did not want to accept a gift from the BPC, and because I did not feel that the content of the meeting was sufficiently important to my education as a Board member to pay for the function. This will tend to be my approach—to go beyond recusal to also avoid accepting gifts, or to voting on matters where my role as a citizen activist might pose a conflict.

6. **STATE/REGIONAL BOARD RELATIONSHIPS.** Since being appointed to the Regional Board in December, I have attended two meetings of the water quality coordinating committee (WQCC), the forum for communication among the members of all the State's Water Boards. Any group of over 80 appointees that represent different stakeholders will be diverse, but I found the educational content in these meetings admirable. Tam Doduc takes her role as Chair of the State Board and responsibility to educate all Board members seriously, and the recent WQCC meeting in San Diego had a high educational content and exceeded my expectations for such a meeting. Certainly any coordination effort could be improved, but at this stage, I don't know enough about the workings of the various Water Boards well enough to offer any constructive suggestions at this time.
7. **FUNDING LEVELS.** Our Executive Officer has estimated that we are at about 40% of the staffing level that we would have to be to effectively administer all the environmental laws that we are responsible for. While the fee structure that has been established, and the willingness of some dischargers to pay for dedicated staff to get better turnaround helps, not every issue gets a timely response. Further, controversy often has the effect of setting priorities. For example, litigation at the Federal level over delays in developing TMDL's has had a strong influence in priority setting. Any water body that needs a TMDL represents a priority problem, but because of the presence of

legacy contaminants such as mercury remaining from activities that stopped over a hundred years ago, not all such problems are equally resolvable through the TMDL process. As mentioned above, I think that the Regional Board needs to set priorities, with active input from stakeholders, for the work of the upcoming year. I intend to have a series of conversations with key stakeholders to get their views on priorities, and make sure they understand the fiscal constraints we operate under. The other tool that I would like to see implemented is a system of metrics that helps assess and improve performance, and leads to better priority setting. It seems to me that the focus on controversial issues like TMDL's has made it more difficult to proactively work on more mundane issues like aging infrastructure and infiltration of storm flows. Thus, we are playing catch-up on the issue of sanitary system overflows.

8. TMDL PROCESS. At one of my first Board meetings, we adopted the TMDL for PCB's. I had participated in the development of TMDL's while working at the Port of Oakland, and worked as a Board member of SFEI to encourage and fund monitoring that would provide strong technical support for well conceived TMDL's. We have made development of TMDL's a priority, but ensuring that staff resources are available to work on TMDL's has interfered with work on other priority problems. Two issues will slow down implementation of TMDL's, and lead to at least some level of frustration on the part of groups like the Baykeeper. First, even though the RMP has provided better information about contaminant levels in San Francisco Bay than most water bodies, that information is not always sufficient to accurately assess the sources of all contaminant loads. Past practices have left reservoirs of sediment in the Bay (and in the surrounding watersheds) with elevated levels of mercury, PCB's, and lead. Those sediments are not well characterized, and the physical processes of erosion of those sediments are not so well known that we can accurately predict erosion of those bedded sediments, or devise strategies to prevent or delay erosion. Second, some of the control measures have significant impacts, and cannot be mandated without completing detailed analysis under the California Environmental Quality Act. For example, the bedded sediments in San Leandro Bay between Alameda and the Oakland airport business park have elevated levels of PCB's. Yet those sediments make up a shallow Bay that provides habitat for endangered species, and removal of bedded PCB contaminated sediments in the marine environment could lead to increases in PCB levels in the water and biota. It is not clear that removal of such sediment **should** be part of the TMDL. While it would remove mass from the Bay, it would increase exposure in the short term and adversely affect endangered species habitat. Many of the tough decisions implementing TMDL's have difficult tradeoffs like those in San Leandro Bay, which require more complicated analyses and environmental review. These complexities have a greater impact on TMDL progress than staffing levels.
9. MONITORING AND ENFORCEMENT OF TMDL'S. I know the implementation strategy for the PCB TMDL well since it was the most significant item I voted on. The first steps involve removal of known reservoirs of PCB's where they have been identified. Schedules for removal will be required in renewals of permits for dischargers, particularly stormwater dischargers, and increased monitoring will be required. That monitoring should result in identifying additional reservoirs for removal, as well as answering some of the questions about transport of contaminants towards the Bay that I noted in my response to question 8. This information is being used to improve modeling of loadings to the Bay, and the increase in monitoring that is being required will result in better predictions in the rate of recovery. This will allow the Board to evaluate subsequent, more expensive control measures with a better understanding of the rate of recovery without such measures, the relative effectiveness, and the environmental impacts. My

personal approach is to use cost-effectiveness as a tool in implementation so that each given amount of public expenditure removes the maximum amount of contaminant. Reports to the Board and the public at least every two years, and timely review are essential to the effectiveness of this strategy.

10. **STRATEGIC PLAN UPDATE.** The strategic plan is a new area for me; most of my experience is in the arena of established programs and established budgets. The first WQCC meeting I attended, December 10-11, 2007, dealt with the Strategic Plan. My perspective then was that it was essential to begin establishing metrics to guide and improve performance and accountability. Now there is a draft strategic plan, and it is appropriate to listen to the viewpoints of the stakeholders on what the priorities should be. I agree with the strategic plan that protecting and restoring surface waters, which require completion of TMDL's, is the top priority. I also think that the Strategic Plan begins to identify the importance of metrics, or more exactly a "total quality management" approach, as a tool in management. Obviously, the staffing decisions that should be made should, to the degree possible within legal limitations on funding sources, be directed to the most pressing issues in accordance with an overall strategic direction.
11. **PROGRESS IN REDUCING CONTAMINANTS.** The Regional Board has developed TMDL's for mercury, PCB's, pesticides in urban creeks, pathogens in some waterbodies, and has three additional TMDL's at the hearing stage. In assessing risk, the Regional Board has used both human health endpoints, which involve human consumption of Bay fish, and ecological endpoints involving sensitive Bay species such as seals and the California Clapper rail. The latter approach generally results in more protective standards. Monitoring of fish tissue levels, coordinated by the SFEI staff, provides an ongoing assessment of progress. Other special studies funded through the RMP give us better ideas of the processes of biological uptake. This guides not only the work of the Regional Board, but also provides critical input to important habitat restoration work like the South Bay Salt Ponds restoration effort headed up by the Coastal Conservancy. Finally, several of the TMDL's include risk management strategies that require different stakeholders to work together in devising communication programs that educate people who eat fish caught in the Bay to minimize their exposure to contaminants.
12. **NEW SOURCES OF WATER POLLUTION.** In the early 1990's, a predecessor Regional Board consolidated many of the ongoing monitoring efforts into a Regional Monitoring Program (RMP) that looks at the Bay as a whole. One of the key work groups within that effort is the emerging contaminant workgroup. Monitoring directed by that workgroup has identified high levels of flame retardants in Bay biota, and high levels of pharmaceuticals, personal products (e.g. musk scents), and androgenic chemicals in waste discharges and the Bay. All of these pose difficult issues for the next round of water quality management.

While the Regional Board has broad authority to regulate emerging contaminants, sufficient understanding of the threat posed by any contaminant is necessary both to initiate regulatory efforts, and to meet the nexus test for reasonable regulation. For emerging contaminants, additional work that provides information about ecological impacts needs to be completed. The fact that bioaccumulation is occurring, by itself, is not sufficient to move towards regulation or prohibition of chemicals unless there is information that shows the bioaccumulation reaches a threshold of environmental impact. Thus, good work on monitoring and potential biological impacts needs to continue. We should definitely be working with the Department of Health Services to establish thresholds which reflect both human health and ecological concerns.

13. TESTING AND STANDARD LIMITS FOR PHARMACEUTICALS. I believe that my answer to questions 1 and 12 cover this. We know that pharmaceuticals pass through our existing treatment systems largely untreated, and that educational effort to stop the general practice of "flushing" expired drugs is not sufficient. But we don't yet know whether specific standards will be required, or what they should be.

14. PARTNERSHIP EFFORTS. This effort came about before my appointment, so my knowledge is quite limited. I understand that the program has been successful in San Mateo County because of the direct participation of the County sheriff's office in proper disposal of controlled substances. While the program has had some successes, we need to continue to monitor the impact on water quality, and consider further educational approaches, including working with the health care industry. In many cases, local governments find other activities higher priority for their limited funding.

15. ENFORCEMENT OPTIONS. My perspective on enforcement is colored by my experience in water quality during my career. Before I retired, I ran the environmental department at the Port of Oakland; the Port was twice the subject of enforcement by the Regional Board, and it took a substantial effort on my part to corral different, decentralized activities at the Port that were not being undertaken in full compliance with environmental laws. Prior to that, I worked at the Coastal Commission where the Attorney General's office was not always eager to pursue violations. Even earlier in my career, I had a hand in funding upgrades to sewage treatment plans in my work with EPA. With that in mind, I see the system of mandatory minimum penalties and administrative enforcement capability to be a substantial improvement over practices that rely on the Attorney General's office and litigation.

As an environmental manager, my approach to something going wrong was generally to complete a root cause analysis. I try to determine what physical or institutional problem led to the problem, and then what structurally had to be done to prevent recurrence. In some cases, restrictions in permits were not translated into construction specifications that were sufficient to meet the permit requirements. In other cases, operational groups such as maintenance crews operated as they had for years, without notifying anyone in the environmental department of their activities.

While fining a discharger who is in violation of their permit can be necessary to establish economic incentives to comply with the law, fines are not a good measure of water quality damage and recovery. My primary concern is to solve the water quality problem so that it is not ongoing. My next concern is to make sure that the underlying cause is understood, and changes have been made to procedures or equipment so that it will not recur. Finally, I consider the record of the discharger and the response to remediate the problem.

16. FINES. I covered this matter in my response to question 15. I think that fines are essential for egregious violations. At times, remediation of the damage caused, or bad publicity, can be much more effective than fines. For recurrent problems, I am much more likely to look at fines as incentives. Where I see quick action, limited impact, and a strong institutional response to fix the problem so it will not recur, I am not so determined to fine a discharger.

17. SEWAGE SPILLS. See my response to question 2. I think the biggest cause of overflows is infiltration in collection and transport systems, which has not gotten enough scrutiny and needs a

systematic response. The Board has directed staff to assess the amount of infiltration affecting the different sewerage agencies, and establish priorities for corrective measures. We have seen this effectively in renewal of NPDES permits for a number of dischargers already.

18. SPILLS. I provided my response on sewage spills in response to questions 2 and 17. There was a recent spill of toluene in Richmond that appears to have caused substantial damage. Any entity that stores chemicals subject to spill is required to have hazardous materials business plans that cover the proper storage of such materials to prevent spills. However, such plans are approved by local governments, not by the Board. We need to assess the effectiveness of the HMBP for this particular spill, and on a more general basis for the large number of businesses that handle and store the most hazardous materials.
19. OIL SPILL CLEAN-UP. This is a difficult question to answer since the Regional Board recently authorized litigation over the spill, and since the Regional Board is not a principal player in the Natural Resources Damage Claim (NRDA) process. That process is the legally mandated way to adjudicate claims for such a spill. Conceptually, I think that the outcome of the spill claim process and litigation should be 1) restoration activities that completely and directly offset the natural resources impact of the spill; 2) compensation to local and State governments that incurred expenses for spill response and clean-up; and 3) compensation for the losses in recreation and commerce that occurred while the spill response was ongoing. There is a direct nexus between the spill and these offsets. Further, I think that the restoration funding should be sufficient to result in a net increase in both habitat and recreation. Since these costs and the actual clean-up costs are so large, I think that this would be a sufficient economic deterrent to further spills. I am mindful that the punitive claims from the Exxon Valdez litigation are still outstanding, so I don't see that as a better approach. When the clean-up has been completed, the Regional Board will make sure that any long-term monitoring will be completed to assess the long-term impact.
20. LESSONS LEARNED. The fundamental lesson is that it is impossible to contain all oil once spilled in a dynamic environment such as the Bay. I also think that GPS systems, with redundancy, should be part of the standard equipment on a ship and in the hands of Bay Pilots.

I trust that these answers are sufficient. I am available to augment these answers orally or in writing.

Very truly yours,

James McGrath

**California Senate Rules Committee Appointment Division
Questionnaire for Confirmation Hearing on June 4, 2008**

Appointee: Rameshwar Singh, Ph.D.

Agency: The San Francisco Regional Water Quality Control Board

Senate Rules Committee

MAY 11 2 2008

Statement of Goals

Appointments

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*

Some of the issues I will be working on are as follows:

- Coordination of activities between the state and the regional Board
- Suggest use of modern technologies wherever possible
- Make further progress on TMDLs development
- Work on preventative measures to stop sewage spills
- Come up efficient and workable storm water clean up plan
- Find a systematic enforcement rules under the law to deter violations
- Increase communication with private groups engaged in protecting water quality
- Work on better coordination among the Board and State and Federal agencies to prevent and mitigate the effects of oil spills.

2. *What do you believe are the most serious issues facing your board?*

Most serious problems facing the Board can be summarized:

- Legacy contaminants such as mercury and PCB's will continue to impact the Bay for some time even though we have developed regulatory strategies for addressing their contamination;
- Significant state and federal funds were used to upgrade the region's wastewater treatment plants in the 70s and 80s. Now, that infrastructure is starting to reach the end of its useful life, and these facilities need reconstruction and/or further upgrade, but little state and federal funding is available now.

- Other infrastructure, such as flood management structures and sewage collection systems, is already past its useful life. The sewage spills in Marin County in January were an example of the water quality impacts of this failing infrastructure.

- "Emerging contaminants" are chemicals that are starting to be detected in the Bay, but for which we have little scientific information on their public health or water quality impacts and little basis for their regulation.

3. *How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?*

- I am happy to report that the Board's website has been recently upgraded to provide improved information on water quality issues and policy setting and to provide links to water quality data. Updating of website will continue as needed.

- I understand that the Water Board required all dischargers to develop and participate in the Regional Monitoring Program (RMP) for Water Quality in the San Francisco Bay Estuary in early 90s.. The RMP is managed by the San Francisco Estuary Institute, which summarizes annual RMP in the publication, Pulse of the Estuary.

- Our Board regularly produces "fact sheets" for the public about water quality issues or, in the case of groundwater cleanups, about cleanup sites.

- Our Board will try to work more closely with county health departments to ensure that the health departments have up-to-date water quality information and are making water quality and public health information available to the public.

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

4. *Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?*

- I use my experience and knowledge to understand the issues. I also search literature to analyze complex issues. Additionally:

- Water Board staff, both at the management and working level, are competent, courteous and always available to respond to my questions.

- I receive regular status reports on significant issues from the staff. These reports are also available to the public.

- Board members commonly request the staff to address specific issues at future Board meetings if either the Board or the public raises questions about evolving issues.

5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

-Shortly after my appointment, I was trained by the State Water Board lawyer, Mr. Philip Kyel, on the conflict of interest laws.

- Water Board legal staff have briefed me in person and directed me to appropriate web documents on the issues of conflict of interest and making a decision based on the record before the Board. State Board lawyers are familiar with my background, and they talk to me in anticipation of any appearance of conflict of interest.

- The Water Board's attorneys are always available to address potential conflict issues.

- I just follow the law, and if in doubt, I consult the Water Board lawyer.

- I did not have an occasion yet to withdraw from a Water Board decision.

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

- I am still new to this Board to comment precisely about the need for refinement of working relationship between State and regional boards. However, regional boards should have free hand in developing policies and rules, which are specific to their regions. The State Board and regional boards in cooperation should develop policies which apply to the entire state. Enforcement and coordination of these policies should be guided by the State Board.

- A State Board member has been assigned to our Regional Board and attends and comments at our monthly meetings when his schedule permits

- State Board staff has attended our meetings and provided our Board staff direct assistance in media relations, outreach, and responding to public inquiries

- Our Board staff is working directly with State Board staff on development of stream and wetlands policies, water reuse policies, and addressing the impacts of climate change.

- Coordination can always be improved, but the State and Regional Boards are making progress in better working together to develop and implement policy consistently.

7. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

- Board staff has prepared summaries of our Board's current funding, demonstrating that it is difficult to give all regulatory programs the attention they need. Of course, some prioritization becomes important under tight funding environment.
- Board staff has prioritized its oversight and regularly reviews this with the Board.
- Board staff is currently reorganizing to more effectively address the need for consistent enforcement across all programs. This is being done by expanding the number of staff dedicated to enforcement, while reducing the enforcement responsibilities of non-enforcement staff.
- Addressing the impacts of failing infrastructure, implementing TMDLs once they are developed and adopted, and addressing the impacts of climate change are some issues that are underfunded.

8.

Cleaning Up Polluted Waters

The state and regional water boards are in the process of updating the strategic plan for water quality control in California. Governor Schwarzenegger has stated as a goal the full implementation of existing water quality programs such as municipal storm water permit programs and TMDLs programs.

According to a May 2007 report to the board, regional data collected in the past decade suggests bay water quality is "holding steady." The most notable water quality improvements over the last four decades came in the 1960s and 1970s. While problems from legacy pesticides like DDT, metals, and polychlorinated biphenyls have declined, likely in response to product bans and regulatory actions, new pollutants are being found such as polybrominated diphenyl ether (PBDE) associated with flame retardants.

Additionally, new testing by independent organizations has turned up a vast array of pharmaceuticals and over-the-counter medicines affecting drinking water supplies across the country. While the findings reported by the *Associated Press* in March 2008 involve miniscule amounts of various pharmaceuticals, concerns over long-term consequences to human health and possible additional testing have resurfaced.

Under current law, required testing and standard limits for pharmaceutical and over-the-counter drugs in drinking water are limited. Beginning in January 2008, several water systems began monitoring under the U.S. Environmental Protection Agency (USEPA) Unregulated Contaminant Monitoring Regulation for contaminants selected from the Contaminant Candidate Lists. These are potential contaminants that USEPA may regulate in the future. Federal and state laws give authority to USEPA, the

California Department of Public Health, or the regional water boards to regulate contaminants, which could include pharmaceuticals.

8. *Please describe the status of your board's TMDLs process. Does your board have adequate resources to develop and implement the required TMDLs?*

- Number of TMDLs are many. It will take time develop them.
- Our Board is making significant progress in developing TMDLs and getting them adopted. In the short time I have been on the Board, I have been able to consider adoption of PCB-TMDL and participating in the testimony hearings of two others.
- Funding is adequate to regularly bring TMDLs to the Board for consideration, but, given the number of TMDLs needing adoption, all TMDLs will not be able to be considered for another 8 to 10 years.
- Once adopted, there is limited funding for overseeing the implementation of the TMDLs or for monitoring their progress in restoring impaired waters.
- TMDL adoption is hampered not so much by the limited staff resources for their development, but by the need to develop appropriate technical information that is needed to complete a task. It is also hampered by procedures that slow their development and adoption, such as the need for California Environmental Quality Act (CEQA) review of a project that is intended to protect and restore the environment and for State Board approval of TMDLs that have already been adopted in a public process before the Regional Board. We will be working with the State Board about the possibility of refining this procedure.

9. *How will the board monitor and enforce the TMDLs it has or will adopt?*

- Implementation of TMDLs is most commonly through permits or other regulatory mechanisms. Our Board has adopted regionwide permits, such as the regionwide mercury discharge permit for wastewater dischargers, to specify the required level of implementation and monitoring.
- Permits and other regulatory means are directly enforceable actions that become the responsibility of our enforcement staff to oversee.
- Our TMDLs commonly specify an adaptive management strategy that phase's implementation based on monitoring and the collection of new information about the constituent or its control. Again funding for field and monitoring staff is a limitation.

10. *What do you believe are critical elements that should appear in the updated strategic plan for water quality control in California?*

- A statewide strategy for consistent enforcement
- Robust outreach, education and public participation, both in implementing regulatory programs, but also in things the public should do to help protect water quality
- Increased focus on water sustainability, water and energy use efficiencies, and addressing the impacts of climate change
- Increased focus on addressing water quality issues on a watershed basis, rather than on a discharger-by-discharger basis.
- Implementation of preventative measures to prevent the entry of pollutants in waters at the source. It may require incentives.

11. *What is the board's progress in reducing mercury, PCBs, dioxins, pesticides, pathogens, PBDEs, and other pollutants that pose health risks to those recreationally taking fish and shellfish in San Francisco Bay and along the region's coast?*

- The Water Board has made significant progress in addressing pollutants such as mercury, PCBs, and others that pose both human health and ecological risks.
- The Water Board has prioritized its development and implementation of TMDLs to focus on pollutants, such as mercury and PCBs that pose the highest risk to human health and the environment.
- The Water Board has adopted TMDLs for mercury and PCBs in San Francisco Bay, mercury in the Walker Creek/Tomales Bay watershed, pesticides in urban creeks, and pathogens in North Bay creeks and rivers.
- The Water Board will consider adoption of TMDLs for mercury in the Guadalupe River watershed and for pathogens in Richardson Bay this summer.
- The Water Board has worked with stakeholders for all of these TMDLs to implement "early removal actions" in advance of TMDL adoption and implementation, such as implementing mercury take-back programs, dental amalgam control programs, and cleanup of sites such as Castro Cove, Yosemite Creek, and Alamitos Creek that have elevated levels of mercury and PCBs.

12. *How are you informed about new sources of water pollution in the basin? How should the board respond to the increasing problem of PBDE, which is being found in harbor seals, fish, bird eggs, peregrine falcons, human breast milk, and the fatty tissue of humans?*

- I get news from the staff as well as public sources.
- The Regional Monitoring Program (RMP) monitors for more than heavy metals and other constituents commonly found in wastewater, since it looks at the Bay as a whole, not only at sites near discharges.
- The RMP includes an emerging contaminant workgroup. Monitoring directed by that workgroup has identified high levels of flame retardants in Bay biota, and high levels of pharmaceuticals, and androgenic chemicals in waste discharges and the Bay.
- Data collected by the RMP has provided the basis for the ban of certain types of flame retardants.
- The RMP continues to monitor for alternative chemicals now used as flame retardants.
- The Water Board is working with wastewater plants to determine what types of treatment are needed to effectively remove PBDEs, other flame retardants, and other emerging contaminants from wastewater.

13. *In your view, what is the role of regional water boards regarding required testing and standard limits for pharmaceuticals and over-the-counter drugs in drinking water? Should the state water board, through regional boards, be working with the California Department of Public Health to require testing and set safety limits for drugs in drinking water?*

- The Water Boards' role in control of new sources of pollution should remain one of coordination with the agencies mandated to develop drinking water, public health, and ecological standards and risk levels for chemicals.
- We should continue to coordinate with the Department of Public Health on what contaminants are present in drinking water and whether they are or can then become present in wastewater.
- We should continue to coordinate with the Office of Environmental Health Hazard Assessment to identify which chemicals merit further study and development of ecological risk levels
- Once the other agencies develop standards for emerging contaminants, the Water Boards should continue to use their regulatory authority to oversee control and reduction of such contaminants in waste streams.

14. *Your board reported working in partnership with community groups on a project promoted locally to collect unused prescription drugs from area residents to help reduce contamination of water supplies. How does the board review the success of such projects? Do boards share "best practices"?*

- We now requires in the wastewater permits we issue annual reporting on local agencies' work on collection of prescription drugs, take-back of mercury thermometers, and other pollution prevention efforts designed to remove pollutants from waste before those pollutants need treatment. Such reporting includes quantities collected and identification of obstacles in implementing pollution prevention.
- Water Board staff meet regularly with groups such as the Bay Area Pollution Prevention Group and the Bay Area Clean Water Agencies to review both progress and obstacles in expanding collection programs. Both of these groups have made presentations on their progress to the Water Board.
- We have initiated an annual award program to recognize and support local pollution prevention programs
- We encourage public agencies to partner with community groups to both publicize the need to properly dispose of prescription drugs and expand take-back opportunities.
- Water Board staff participate in roundtables with other regions to share "best practices" and address obstacles.

Enforcement of Water Quality Laws

Three years ago the Office of the Secretary of The California Environmental Protection Agency (Cal-EPA) reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

15. *What enforcement options do you believe provide the most effective tools for violations of board orders?*

As background, some of our enforcement options include orders for submittal of technical reports, notice of violation letters, mandatory minimum penalties (which are set at \$3000 per

violation), administrative civil liabilities levied by the Board (which allows fines up to \$10000 per day of violation or \$10 per gallon spilled in excess of 1000 gallons), administrative civil liabilities levied by the Superior Court (which allows the \$10000 per day go up to \$25000 per day, and the \$10 per gallon go up to \$25 per gallon), cleanup and abatement orders that mandate completion of specified tasks, and cease and desist orders that establish schedules for returning to compliance. We have been using all of these measures as appropriate to enforce the law against violations, to ensure parties address the impact of their violations, and to deter future violations.

- There is no one most effective option to address violations of board orders. Since the circumstances of each violation differ, the most effective option may differ from violation to violation.

- When agencies such as wastewater dischargers infrequently violate their permits, mandatory minimum penalties and fines are effectively and efficiently imposed fines to ensure that the decision-makers of the discharges are fully aware and take responsibility for their violations.

- When agencies or other parties have frequent or repeating violations or are clearly negligent in allowing a violation to occur, strong administrative civil liabilities not only penalize parties for their violations, but effectively deter that party from having similar violations in the future.

16. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

- Fines and penalties play a significant role in publicizing the need to comply with the Porter-Cologne Act, penalizing those violating the Act, and deterring the party in violation and other parties from future violations of the Act.

- Our Water Board aggressively imposes multi-millions in fines each year to repeaters and negligent violators.

- Mandatory minimum penalties are having the desired deterrent effect, as the number of violations subject to such penalties is dropping.

- It may not be appropriate to fine small businesses or individuals that may be forced to go out of business to pay a fine. It is better to use other enforcement options available under Porter-Cologne to ensure that such party's cleanup the impacts of their violations.

- Fines may not be appropriate in circumstances when violations are due to natural and unforeseen causes, and if the parties involved immediately and sincerely take steps to correct the problems.

Sewage Spills

The regional board has been criticized for its handling of two large sewage spills at the end of January 2008. Cal-EPA secretary faulted the regional board for not immediately investigating the release of 2.5 million gallons of untreated sewage into Richardson Bay through a tidal marsh, and a larger spill from the same municipal facility less than a week later. Both incidents reportedly posed health risks to people using the bay, and late reporting by the sewage treatment plant delayed health warnings to the public. State law requires the sewage-treatment plant to notify emergency officials of any dangerous spill as soon as possible and to tell the water board within 25 hours.

17. What short- and long-term changes, if any, do you believe should be made to improve regulatory responses to sewage spills and promote more aggressive investigations of spill incidents?

The following steps have been taken under the Board's guidance:

- Since the January spills, Water Board staff has issued new spill notification requirements to sewage collection system and wastewater treatment agencies to ensure Board staff and the State Office of Emergency Services receive timely notice of spills.
- Since the January spills, Water Board staff has changed in-house spill response procedures to ensure that timely investigation of spills can proceed even on weekends.
- based on our Water Board's recommendation in response to the January spills, the State Water Board has updated its requirements for reporting of sewage collection and wastewater treatment plant spills and removed reporting gaps that allowed plant spills to go unreported until monthly reports were filed.
- longer-term, while the Water Board has regularly fined agencies responsible for spills in the past, it needs to identify those agencies with the poorest spill records and make more stringent requirements for system upgrades or plant upgrades through the use of cease and desist orders or other enforcement options.
- The Water Board staff has recently required all agencies with spills to report those spills electronically through the Board's website. This will better allow staff to identify those agencies with poor records
- The Water Board needs to work with groups such as the Bay Area Clean Water Agencies to ensure that all public agencies have effective maintenance and upgrade programs in place and include the need to address sewage spills in their strategic plans.
- The Water Board staff has started to work with collection system agencies and local agency formation commissions to encourage consolidation of agencies incapable of maintaining or upgrading their collection systems.

18. In 2007 there were reportedly more than 275 spills of over 1,000 gallons each in the region. Should the board consider changes to address the problem of recurring sewage spills?

As explained in item 17 above, changes have been effected to address the problem of any sewage spill.

Oil Spills

The board's executive officer reported that a cleanup and abatement order is being issued for the short- and long-term effects of the 58,000-gallon bunker oil spill into San Francisco Bay when the 900-foot container ship Cosco Busan struck a San Francisco-Oakland Bay Bridge tower on November 7, 2007. Tides carried an oil plume beneath the Golden Gate Bridge and into the Pacific Ocean. At least six beaches in San Francisco and Marin County were closed; fishing and crabbing were restricted temporarily.

19. *In your view, how should the board be addressing the impact of the oil spill and the cleanup and restoration of the bay and affected coastlines?*

As background, our agency is not a "first response" agency, such as the Coast Guard and the Department of Fish and Games' Office of Spill Prevention and Remediation. However, we act as water quality experts in assisting those agencies in their response, we have the ability to enforce against parties responsible for a spill, and we can require ongoing monitoring and cleanup to ensure the impacts of any spill are fully mitigated.

- The Water Board is working with the state and federal agencies responsible for spill response and oversight to ensure that all areas impacted by the spill are fully cleaned up before those agencies determine their oversight roles are complete.

- Once the oversight agencies have completed their mission, the Water Board intends to issue a cleanup and abatement order to the responsible parties to ensure the impacts of the spill are fully monitored over the long-term. Dependent on that monitoring, further remediation may be required.

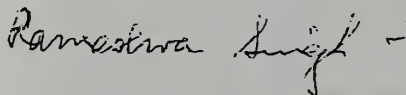
- The Water Board is working with state and federal resource agencies to determine the appropriate mitigation needed to address the spill's impacts. The Board is also coordinating with state and federal agencies on the penalty-phase of the spill enforcement, similar to its coordination with state and federal agencies on the 2004 Kinder-Morgan pipeline spill in Suisun Marsh that resulted in a \$1.3 million penalty assessed against Kinder-Morgan specific to the Porter-Cologne Act, as part of a total fine of \$5.1 million.

20. *What do you consider to be important lessons learned from the incident that could be applied to further water quality management and in responding to future oil spills?*

- A significant lesson that has come out of this spill is the need for the Water Board to regularly coordinate with the responsible agencies to ensure that the staff of those agencies fully understands the expertise and authority the Water Board can provide in responding to spills.

- Another lesson from the spill is to broaden the ability of local agencies and concerned citizens to participate in spill response and cleanup. These parties know best local areas and their conditions, and guide response agency personnel or effectively perform cleanup themselves.

Submitted by Rameshwar Singh
Water Quality Control Board, San Francisco Region



Statement of Goals

- 1. Since 2001 when you were first appointed, what have been your most significant accomplishments as a member of the Santa Ana Water Quality Control Board?**

As a Board, I believe that our most significant accomplishment is the adoption of the only updated and current Salt Management Plan in the State of California. This was adopted following an intense collaborative stakeholder effort that resulted in a basin plan revision that included all new groundwater basin boundaries, new ambient water quality determinations, new assimilative capacity calculations, and groundwater quality standards that accommodate integrated water supply plans, incorporating recycled water, enhanced stormwater capture, desalting and imported water recharge.

Another important accomplishment was the adoption of a discharge prohibition area for the use of septic tank systems in the Quail Valley area. This discharge prohibition was in direct response to findings that septic system failures were widespread in the area, and was accomplished without appeal of the Board's action and with the cooperation of Riverside County.

As a Board we continue to aggressively address the enormously difficult problem related to the perchlorate problem in the Rialto area. This effort has created an unprecedented demand on staff resources.

- 2. What do you hope to accomplish during your current tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?**

I have a desire to ensure that the responsible parties are held accountable for the perchlorate contamination in the Rialto-Colton basins, that the region's salt management plan be appropriately implemented, that the adverse water quality effects of the use of septic tank/leachfield systems in areas unacceptable for such uses be addressed, and that TMDLs for the region continue to be developed using the best possible science and as expeditiously as possible.

Another priority is to continue our collaborative effort with our stakeholder process. I believe that this process allows all involved parties to have input, generate questions and to garner support for avenues to move forward on critical issues. The success will be measured through the accomplishment and/or resolution of issues.

As Regional boards are funded for less than 50% of our responsibilities. I would look to opportunities to work with the legislative and regulatory to increase their awareness of this matter and to make sure that our current resource level is understood.

Senate Rules Committee

MAY 27 2008

Appointments

3. What do you believe are the most serious issues facing your board?

I believe that the most significant issue in the region is our adverse salt balance. We have an adverse salt balance of almost 600,000 tons per year. Without salt management (TDS controls on wastewater treatment plants, dairies and recharge operations), we could have another Tigris-Euphrates Valley thing, here). Perchlorate gets more press, but it is technically easier to deal with (given enough money). We now have a number of desalter facilities in the region that are beginning to address some of the salt issues. These desalters are being developed in conjunction with integrated water supply plans that incorporate water generated by desalters treating salt-contaminated ground waters. As part of the Salt Management Plan adopted by the Regional Board into the Basin Plan, we are now actively implementing salt management provisions for all discharges from point sources and non-point sources, such as dairies. Salt management activities include regulation of the recharge of imported water sources, such as from the Colorado River and the State Water Project. This has not made the importers of State Project Water happy, but nonetheless, salt is salt, no matter what its source.

Another significant regional problem is the use of septic tank/leachfield disposal systems in areas where subsurface conditions are inappropriate for this purpose (shallow soils, high ground water, underlying bedrock, etc). One major site is the Quail Valley area, which has recently been addressed by a board-adopted basin plan amendment. As our staff resources allow, we need to address other areas, such as Lake Williams in the Big Bear Lake Basin, other areas in the San Jacinto Basin, and in the Beaumont area. We have new data indicating that pharmaceuticals and other emerging contaminants are being found in the groundwater underlying areas with widespread use of septic tanks. This is disturbing, and is becoming more and more of a matter of concern.

Perchlorate is, of course, also very important and has been an enormous staff resource drain. This is a subject that will be a matter of significant concern for the regional board and staff for the foreseeable future.

4. How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues such as beach closures, sewage spills or the overall quality of water in rivers and streams in your region?

The Santa Ana Region has a web site which is linked to many other complimentary sites, provides easy access for the public for all of the board's documents, plans, policies and proposed actions.

With respect to beach closures and sewage spills, the best information is obtained on the Orange County Environmental Health web site, linked to the board's site. The Orange County site is specifically designed for public access to that type of information.

Concerning water quality data, the regional board participates in a data storage archive under the management of the Santa Ana Watershed Project Authority (SAWPA), a joint powers agency made up of the five water districts that overlie the region. This data storage archive provides an easy access location for all forms of water quality data, not just those limited data generated by the board.

State and Regional Board Roles

- 5. Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?**

It is the responsibility of your Executive Officer to respond when a Board member may need help or need something more in-depth than has provided as background material. The board chair and vice-chair also interact frequently with the state board chair to address and deal with statewide matters and routinely update all Board members.

State Board staff have very little opportunity or resources to provide assistance to board members for issues that come before the Regional Board. Even for those issues that have statewide significance, there is usually a Regional Board staff person who acts as liaison, and who acts to present these issues to the Board. I have appreciated the efforts by State Board Member Tam Doduc to attend our meetings on a regular basis and her availability to answer questions, address concerns and provide the Board with updated information.

- 6. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?**

- Briefing by Regional Board attorney and Executive Officer upon appointment of new board members
- On line training by California Attorney General concerning conflicts of interest
- Training at the Water Quality Coordinating Committee by the SWRCB Chief Counsel
- Knowing when it is appropriate to withdraw from voting when there might be a conflict of interest comes from the information provided by the training on ex parte and conflict matters provided for each regional board member, as well as ongoing monitoring by the Board's attorney and Executive Officer.

- AB 1234 training.

- 7. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?**

Most of the opportunities for coordination with the state board come through the Chairs meetings and the WQCC's that have been held over the years. Could coordination and accountability be improved? Yes, but there appears to be a real effort at the state board to improve coordination with the regions. Mostly, I feel that this is not an issue for the Santa Ana Region.

- 8. How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than the need due to current funding levels and constraints on resources?**

I have been informed by staff, and through my independent readings, that an analysis by the Legislative Analyst found that the regional boards are funded for no more than approximately 50% of what is needed to perform all board responsibilities. As a Board we always have to make choices between all of our responsibilities, and there are many instances when some matters simply cannot be addressed.

Based on the funding gap, there are lots of things that the Board should be doing, but is not.

- Basin Planning - For instance, there are many basin planning matters that should be addressed in order to properly update the region's basin plan. There is simply no funding to do most of the work that should be done. In fact, the region's salt management plan, which I have mentioned earlier, was funded by the region's stakeholders who believed they could not wait for state funding to be available to address the regional needs.

-Enforcement – The Board has been unable to undertake all of the enforcement matters that we should. We prioritize those matters to address the most egregious, but cannot prioritize for the less significant mandatory penalty complaints, such as we had at the last board meeting. The board is required to assess mandatory minimum penalties for violations of permit effluent limits. We do so, but often, only significantly in arrears when many of the violations are quite stale, perhaps even a year or more later, when enough violations occur to make the process more efficient, given resource limitations.

- TMDLs - We are significantly behind in addressing TMDL matters due to funding, and hence, staffing and data constraints.

Other areas also get less attention than they should, due to funding constraints, including: oversight of NPDES and waste discharge permit holders, oversight and

prosecution of ground water contamination due to volatile organics (solvents), development and implementation of non-point source programs, and addressing other perchlorate issues other than those in Rialto.

Cleaning Up Polluted Waters

9. What do you believe are critical elements that should appear in the updated strategic plan for water quality control in California?

Board members have received a number of briefing at WQCC's, at special training conducted to educate and inform board members, and at board meeting briefings by the state board chair that outline the progress and components of the state board and regional board's strategic plan. We support the components incorporated in the draft strategic plan and look forward to its implementation.

10. Please describe the status of your board's TMDLs process. Does your board have adequate resources to develop and implement the required TMDLs? How will the board monitor and enforce the TMDLs it has or will adopt?

There are many different milestone dates later this year, and over the next few years, for the development and implementation of TMDLs in the region. Unfortunately, this schedule is not being met in all instances. Why? Mostly, because the process of developing the TMDLs seems to repeatedly lead to a conclusion that additional science needs to be generated so that a decision can be based on sound science, instead of conjecture or inadequate science. Generating science costs money and takes time. The staff of this region has taken a position, supported by the Board that, it is better to incur the displeasure of others caused by delays, rather than to suggest poorly-supported TMDLs based on inadequate or inappropriate science. Why? Implementation of TMDLs is often woefully expensive. It would be poor public policy to require enormous expenditures without adequate scientific basis.

TMDLs will be coming to the board for final consideration, both later this year and next year. There are no easy TMDLs left for the board to consider. The TMDLs being proposed are complicated and very costly.

Although this has been often repeated, but as the Senate Rules has asked the question, no, there are not adequate resources to develop and implement the required TMDLs. Besides needing significantly more staff to work on these matters, funding is also needed to generate the sound science on which to base TMDL decisions.

The most important steps in monitoring, implementing and enforcing TMDLs is to include the TMDL provisions in both waste discharge requirements and in the updates of the water quality control plans (basin plans). In this region, TMDL requirements have

been included in specific individual waste discharge permits, general waste discharge permits and in basin plan provisions.

Also, other agencies have a responsibility to do their share with respect to the implementation of TMDLs. This is why TMDL provisions have been included in the area-wide storm water permits, which are the responsibility of county and municipal entities to implement. We ensure that they meet this responsibility by enforcing the permit conditions.

- 11. In your view, what is the role of regional water boards regarding required testing and standard limits for pharmaceutical and over-the-counter drugs in drinking water? Should the state water board, through regional boards, be working with the California Department of Public Health to require testing and set safety limits for pharmaceuticals in drinking water?**

The regional board is already requiring the testing of wastewater discharges and recharge projects for pharmaceuticals and personal care products. However, the drinking water standards should be set as they always are in this state, through the work of the Office of Environmental Health Hazards Assessment and the California Department of Public Health.

- 12. The Santa Ana region has been active in the use of reclaimed water. In 2007 Orange County opened a half-billion dollar reclamation project, almost four times the size of a major project in Los Angeles that was shelved because of negative public reaction to using purified wastewater. Orange County projects the new reclamation effort will supply up to 500,000 people with 70 million gallons of treated water. Should there be actions to further advance the use of reclaimed water in the region? If so, what are they? Are there “best practices” from the region that could be considered for use elsewhere in the state?**

This is an enormous question. It is not that the Santa Ana Region has just been “active” in the use of reclaimed water, this region has been the state leader in the use of recycled water. The Orange County project is not a half-billion dollar project. When the improvements to the Orange County Sanitation District necessary to support the effort of the Orange County Water District, the costs are closer to one billion – yet this will provide enormous benefit and great value to the citizens of Orange County.

Further, the “70 million gallons” is not accurate, based on the information we have on the Orange County Water District project. The project is seeking to produce 100 million gallons per day of recycled water recharged into the Orange County groundwater management zone for both the prevention of seawater intrusion and for groundwater recharge purposes.

The region has utilized the state board antidegradation policy to develop site-specific groundwater management zone standards that accommodate the use of recycled water

as part of integrated water supply plans (Maximum Benefit Objectives). These plans incorporate the use of recycled water, imported water recharge, enhanced stormwater capture, and desalters to provide highly reliable local sources of water, thus relieving some portion of the stress on the delta to provide ever-increasing amounts of imported water for the region.

The use of Maximum Benefit analyses and standards would be of benefit elsewhere in the state to regulate the use of recycled water in a manner that provides for long-term protection of water quality and sustainability.

Dairy Pollution

- 13. How does your board evaluate the effectiveness of the region's efforts to address the significant water and groundwater impacts from dairies in the Chino Basin? Are you satisfied with the results thus far?**

This region had adopted a general dairy permit in conformance with the federal Confined Animal regulations and programs. All dairies in the region are required to be under an NPDES permit. All dairies are required to have engineered waste management facilities and are required to report annually to the regional board. As a Board we are very proud of this program and are satisfied with its success. However, more dairy staff resources would provide even more insurance enhancing the effectiveness of the program.

- 14. What should the priorities be for the board in addressing water quality problems from dairies?**

The main priority is to ensure that the dairies prepare and implement engineered management plans for each and every facility. We also work very closely with the Chino Basin Watermaster and the Inland Empire Utilities Agency to ensure that desalting facilities continue to provide for the reversal of the negative water quality impacts caused by the previous 50 years of dairy discharges to the groundwater.

- 15. What are the challenges facing the board for monitoring, compliance and enforcement?**

The biggest challenge is the lack of adequate staff resources for monitoring, compliance and enforcement.

Perchlorate Groundwater Contamination

- 16. What is the status of the contaminated groundwater in and around Rialto, Colton and Norco?**

The enormous staff enforcement effort against the parties responsible for the Rialto contamination continues at a very high level. Our staff work with attorneys from the State Board Office of Enforcement and the California Attorney General's Office seeks to generate a settlement with the responsible parties that will provide for cleanup of the perchlorate and solvent contamination in the Rialto Basin.

If settlement discussions prove to be unsuccessful, we are confident that the state board enforcement hearing process will be re-initiated.

Areas outside of the plume generated in North Rialto are probably affected by perchlorate that is a legacy of the use of Chilean Nitrate fertilizer, mainly on citrus, through the 1940's.

17. During your first term, what proactive steps did you recommend to address the problems caused by this plume of perchlorate?

I continued to support the staff enforcement efforts and to recommend to the state board to fund investigation and well-head treatment funds from the Cleanup and Abatement Account.

18. What assistance do you receive from the state board on this matter? Do you work with other regional boards who also have perchlorate issues?

Given the need to separate enforcement from other administrative activities, the state board has provided assistance in their willingness to serve in an adjudicatory role in ruling on the draft cleanup and abatement order issued by this region.

Also, state board staff from the office of enforcement have provided enormous assistance to the effort.

Still other state board staff have provided valuable assistance with respect to providing funding for various support activities through the Cleanup and Abatement Account.

19. How does your board help the public understand this issue and how it affects them?

Besides having updates at nearly every regional board meeting, regional board staff participates in many community outreach and information activities and provides testimony to legislative hearings. Information concerning this matter is also maintained and updated on the regional board's web site.

Enforcement of Water Quality Laws

20. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

There is no question in my mind that the advent of monetary penalties caused a sea-change in terms of compliance. The threat before monetary penalties was that we would take the recalcitrant discharger to court. Given state resources, that was pretty much a hollow threat. Civil liability complaints have given the boards much more flexibility with respect to the ability to pursue timely enforcement.

However, fines and penalties are not appropriate in all cases. I do have some fundamental problems with the requirements of the mandatory penalties provisions. This removes necessary flexibility from the regional board members, and in many cases, without mandatory penalties, the region would be working on higher priority enforcement cases where the penalty actions are not mandatory. However, given limited resources, we have to work on the mandatory penalty cases, instead of higher priority non-mandatory cases. This just doesn't make sense. The legislative fix that was attempted with the mandatory penalties provisions was believed to be necessary because some of the regions did not pursue enough enforcement. It might have been a good fix, if all of the boards were fully funded for enforcement. However, that perfect world is not where we live. With resource limitations, mandatory penalties inappropriately change the staff work priorities, from higher priority to lower priority enforcement cases.

21. How would you rate your region's enforcement actions and record? Is the region's enforcement staffing adequate? How do you see your region improving compliance with state and federal water quality laws?

Given the level of staffing for enforcement and other priority programs, I believe that the record for the Santa Ana Region is excellent. However, since our staffing is about at one-half what we need to deal with our responsibilities to enforce compliance with state and federal laws, our enforcement activities are about at those same levels as provided by the funding.

22. The regional board issued a March 2007 report listing 62 supplemental environmental projects that could be considered for funding as an alternative penalty in enforcement cases. While having the list available is useful, several proposals are shown unfunded, with project completion dates that go back as far as 2003. Have you found the regional board's use of supplemental environmental projects to be effective?

I believe that the list of SEP projects are those that could be considered for funding, not those that the Board believe are priorities. Also, many of the projects that could be considered for funding do not have a nexus with any of the civil liabilities that have been issued. Under the State Board Enforcement Policy, a nexus between the violation and the proposed SEP is required.

The use of SEPs has indeed been effective. Many of our SEPs have been proposed for use in Quail Valley, a disadvantaged community with serious public health concerns related to the failure of septic systems. Other SEPs have provided funding for "no drugs down the drain" programs, watershed improvement projects and other important water quality projects.

Natural and Other Disasters

23. Has the regional board assessed the impact of wildfires on water quality in the region?

As a region we are most fortunate in that there were no significantly burned areas within the Santa Ana Region, with the exception of the Santiago Fire in Orange County. With respect to the areas that were subject to wildfire damage, regional board staff spent significant time in the field assessing runoff quality, the status of capacity of debris basins needed to contain problem runoff, and working with other agencies concerned with how runoff from the burned areas might affect compliance with the areawide municipal storm sewer systems.

24. In your view, what steps have been taken to protect water quality in the region from harmful impacts of natural disasters, such as flooding, and preserving the region's wetlands that serve as a natural water filter?

Addressing the effects of natural disasters, such as flooding, is not a program that has been funded for the regional boards. As such, natural disasters are typically addressed in a reactive manner. Should funding for proactive activities related to addressing the effects of natural disasters, this would be a welcome water quality program addition, along with the many other unfunded water quality priority areas. With respect to wetlands, the severely under-funded 401 Certification program works to preserve, enhance and replace wetlands within the region. Project approvals are routinely awarded when it is demonstrated that a project is designed in conformance with the state's policies related to wetlands (i.e., no net loss).

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